FROM THE OFFICE OF THE JUSTICE MINISTER

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30 September 2020

Dear Christine,

DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL

At the Committee session on 24 September there was a discussion on a proposed Committee amendment to Clause 9 of the Bill, to provide that a child need not be aware of, have understood or have been adversely affected by abusive behaviour, in the context of the provision that the child has seen, heard or was present when the abusive behaviour occurs. At the Committee session, as well as in the letter dated 23 September, officials advised the Committee that this is considered unnecessary as the offence is aggravated on the basis of an objective fact, that is that the simply that the child sees, hears or is present. This position remains unchanged.

Clause 9

Officials had also advised that the child aggravation locally is wider than the Scottish provisions in that there is no requirement for a reasonable person to consider that the behaviour would adversely impact on a child or that the child has to live with either the victim or offender; that is that the Scottish legislation provides that their offence is aggravated if a child sees, hears or is present plus a reasonable person would consider the behaviour to be likely to adversely affect a child.

It has since come to officials' attention that the understanding of the Scottish provisions, and the advice given to the Committee (in oral evidence, the letter of 23 September and the earlier Committee response table), was incorrect for which a sincere apology is given. In Scotland the child aggravation in relation to sees, hears or is present is not conditional on a reasonable person considering that the behaviour would adversely impact on a child. Rather there is a separate aggravator provision that can apply where a reasonable person considers that the behaviour would be likely to adversely affect a child and the child lives with either the victim or offender. The two are not dependent on each other. We understand that the provision is anticipated to cover situations where a perpetrator controls a victim's movements to such an extent that they are unable to leave the house to bring their children to school, or to get them to doctor's appointments, or a child's wellbeing would be adversely affected.

This does not change the view of the Department in relation to the sees, hears or is present provision in that this continues to turn on the objective fact, that is whether the child saw, heard or was present. There continues to be no requirement that the child has been aware of, understood or been adversely affected by the abuse. Furthermore, by virtue of this being an aggravating factor it has to be considered as having an adverse impact on the child.

In terms of a provision that the domestic abuse offence would be aggravated where a reasonable person considers that the behaviour would be likely to adversely affect a child, and the child lives with either the victim or offender, it is considered that these cases will typically be captured by the see, hear or is present aggravator, given the condition that the child must live with one or both of the individuals. The Department would have concerns that such a provision could in practice be considered to apply to all incidents of abusive behaviour regardless of their nature, with anything being deemed to have an adverse impact, simply because those involved are part of a family unit. This could raise concerns in the context of the basis upon which increased sentencing is applied and also serve to weaken the impact of the child aggravators.

More generally it should be noted that in sentencing an individual the court must determine the appropriate sentence taking account of all the particular circumstances of the case. On this basis the Department is not minded to make provision for this.

The Department's position in relation to this issue (reflecting the above) has also been updated in the Committee response table, that was previously provided at the end of August, at four places (attached with tracked changes at pages 84 and 85; 87 and 88; 90 and 91; and 93 and 94).

At the Committee session last week a discussion was held on the explanatory note associated with 9(2)(a)(i) and references to a child being unwilling or unwittingly involved. This is currently stated in relation to 9(2)(a)(ii). Members will wish to note that we are proposing to remove the reference at 9(2)(a)(ii) and insert the following text at the end of the part related to subsection 9(2) more generally

"In regards to subsection (2) there is no requirement for the child to be aware of or understand the nature of the behaviour, or for the behaviour to give rise to some detrimental impact on the child. Any involvement of the child could also be unwittingly or unwillingly".

Parental responsibility exclusion

At the Committee session last week members asked that views be sought from NICCY and NSPCC in relation to the proposed change to the parental responsibility exclusion (from under 18 to under 16), in light of the proposed amendment to child protection legislation. Members will wish to note that both organisations have sent correspondence directly to you on this matter. Their view remains that children should be wholly captured within the domestic abuse offence and that the parental responsibility exclusion per se should not apply. While requested the organisations have not directly commented on the proposed reduction (assuming that the child protection amendment is made and the parental responsibility exclusion). Members will wish to note that the NSPCC has stated

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that the maximum penalty under Section 20 of the Children and Young Persons Act (Northern Ireland) 1968 is five years when it is ten.

I would be grateful if you would bring this information to Members' attention.

Yours sincerely,

Departmental Assembly Liaison Officer
(DALO)

Enc. Appendix 1

SUMMARY OF EVIDENCE RECEIVED BY THE JUSTICE COMMITTEE ON THE DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL

CLAUSE 1 – THE DOMESTIC ABUSE OFFENCE

EFM

This clause makes it an offence for a person to engage in a course of behaviour (defined in clause 4(4) as behaviour on at least two occasions) which is abusive of another person with whom they are at the time of the course of behaviour personally connected. Clause 5 defines what two people are personally connected. For the purpose of this commentary, these personally connected persons will be referred to as "the accused" and their "partner/connected person".

Subsection (2) provides that the offence is subject to two further conditions being met. The first of these conditions is that a reasonable person would consider that the course of behaviour would be likely to cause the partner/connected person to suffer physical or psychological harm, which includes fear, alarm and distress (see subsection (3)). The court would be entitled to take account of the circumstances of the case, for example any particular vulnerability of the partner/connected person, in considering whether the accused's behaviour would be likely to cause them to suffer physical or psychological harm.

The second of these conditions is that the accused must either intend that the behaviour causes their partner/connected person to suffer harm or is reckless as to this. This condition could be met in a reckless situation where, for example, the accused is persistently verbally abusive and demeaning towards their partner/connected person but claims that they did not intend the behaviour to cause harm.

Organisation	Comments/Issues relating to Clause 1	Department of Justice Comments/Position
NI Policing Board	NIPB notes that the Bill does not provide for a definition of domestic abuse. While satisfied that abusive behaviour is set out in some detail and understands the reasoning for the exclusion of a separate	The Department considered, in conjunction with core statutory and voluntary sector partners, whether to include a statutory definition of domestic abuse in the Bill ahead of it being finalised. Following this it was agreed that given the detail set

	definition **the Board would welcome the inclusion of a standalone definition of domestic abuse.**	out in the Bill, in relation to what constitutes abusive behaviour (and therefore domestic abuse), that a standalone definition was unnecessary. Furthermore, to provide for a definition in the Bill would not materially change the provisions or serve a legislative purpose, given that any such provision would be likely to simply state domestic abuse means abusive behaviour as set out in Clause 2.
Attorney General for NI	**States that the breadth of the new offence of domestic abuse provides the opportunity for individual decisions that might fall short of what is required by articles 7 and 8 ECHR.** It will be a matter for the PSNI, the PPS and ultimately the courts as public authorities bound by section 6 of the Human Rights Act 1998 to ensure decisions are compatible with these protected rights. **Highlights that an unintended consequence of the very broad drafting of the offence of domestic abuse is its potential for being exploited by stalkers**. A standard pattern of stalking is that there will have been a relationship between A and B, often of short duration. Complaints by A against B to the PSNI about stalking behaviour may be transformed by the inventive malevolence of B into instances of abusive behaviour by A: "she's trying to get me into trouble".	The Department has considered the content of the Bill and is content that it is Human Rights Compliant. We note and agree that any decisions take under any legislation have to be human rights compliant. On the matter of false allegations, and how these are dealt with, this will not be new to police given the range of offences that are currently on the statute book a number of which will be between connected individuals (for example harassment offences). This is an issue that will however be considered further as part of discussions with police.
PSNI	Whilst 1(3) provides that 'references in this section to psychological harm include	This is something that could be further expanded upon in the guidance, if considered necessary.

	fear, alarm and distress' the PSNI is **concerned that this does not provide an adequate definition of 'psychological harm'. In its view the impact of not having an adequate definition could cause difficulty from an operational perspective.**	Members will wish to note that legislation that refers to 'physical and psychological harm' is generally without any further explanation. This includes the Sexual Offences Act 2003, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 and the Mental Capacity Act (Northern Ireland) 2016. The Bill goes further in that in addition to the everyday day meaning of the term (which is standard for legislation where a term is not defined as defined in the Oxford English dictionary) it provides clarification in relation to what the terminology can include (but is not limited to). What will also be important is the policy/operational guidance associated with the new offence.
Men's Advisory Project	Agrees with an objective, 'reasonable person' test being applied but highlights that **extensive awareness raising and training on the nature and different manifestations of coercive and controlling behaviour will be necessary for the 'reasonable person' standard to work. The misconception that domestic abuse is a crime perpetrated by a man and experienced by a woman will also need to be challenged at all levels of society.**	These are issues that will be considered by the Department and partner organisations in operationalising the new offence. The reasonable person text is relevant in terms of application at court. The Department continues to raise awareness of the fact that domestic abuse can affect anyone regardless of gender, sexual orientation, etc. This is an issue that will also be reflected in future advertising campaigns associated with the new offence as well as social media activity.
Women's Aid Federation	**Recommends that certain elements of the law could be mandatory so that there is no room for error as a result of individual lack of understanding of**	It is unclear what is meant here. Given that the provisions will be in statute they will be mandatory. The Department recognises the importance of training and awareness raising. A multi-agency

	domestic violence and abuse and coercive control on the part of police, solicitors, barristers, judges etc. **Has concerns that children could be criminalised and that a person under 18 years old could be charged with a domestic abuse offence.**	Task and Finish Group will consider how best this can be progressed. This will include both statutory as well as voluntary and community sector partners While appreciating the concerns expressed it is important to ensure that the offence is available in cases of domestic abuse against parents, vulnerable elderly grandparents as well as ongoing and persistent abuse in teenage relationships. As with all other offences, in deciding whether to charge a young person, consideration will be given to the circumstances of the case, whether the test for public prosecution (including a public interest test) is met and what alternative disposals may be available. Youth Justice Agency staff are trained to recognise and respond to issues of domestic abuse in all its forms, whether a child is a victim or perpetrator. They are required to negotiate the procedural and process requirements of both the justice and safeguarding systems as they impact on children and adults, whilst supporting service users to engage with a range of support requirements and safety plans. Specialised interventions are delivered as part of community or court-ordered disposals, often in collaboration with other statutory and voluntary organisations. The experience in other jurisdictions are that the number of young people charged with an offence has been relatively low. We understand that in

		Scotland, for example, around 1.5% of those reported and prosecuted were under the age of 18 (around 15 - 20 individuals), while in England and Wales we understand that only two individuals under the age of 18 have been convicted.
	Recommends the inclusion of a statutory gendered definition of domestic abuse to include violence against women and girls either in the Bill or in the 'Stopping Domestic and Sexual Abuse Strategy'.	While domestic abuse primarily affects women, account needs to be taken of the fact that just under a third of domestic abuse crimes are carried out against men (an increase from 25% in 2004/05) and around 40% of domestic homicides involve males. We would have concerns that the adoption of a gendered definition could send out a message that tackling abuse against men is less important. More generally gendered based violence will be captured by the domestic abuse offence.
	States that the legislation to protect all victims and survivors must include women with no recourse to public funds e.g. partners of settled persons, students or temporary workers and people seeking asylum with their partners.	There will be no exclusions in terms of the application of the domestic abuse offence in this regard. More generally the issue of immigration status is a reserved matter that is not within devolved competence. We continue to liaise with Home Office officials on this matter.
NIWEP	Welcomes the domestic abuse offence and particularly the inclusion of psychological harm. States that **while gender neutral language regarding victims and abusers is appropriate recommends that a gendered element is included in the definition.**	While domestic abuse primarily affects women, account needs to be taken of the fact that just under a third of domestic abuse crimes are carried out against men (an increase from 25% in 2004/05) and around 40% of domestic homicides involve males. We would have concerns that the adoption of a gendered definition could send out a message that tackling abuse against men is less important. More

	Highlights the need to create clarity for victims and build capacity of justice agencies, recommends that robust data collection is undertaken and annual data published and consideration is given to how the legislation will be reviewed and monitored to ensure effective implementation.	generally gendered based violence will be captured by the domestic abuse offence. The Department recognises the importance of robust data in relation to the new offence. How best to secure this, and what will be reported on, is being considered by the Department in conjunction with partner agencies as part of the operationalisation of the new offence. As with any new policy review an evaluation will be an integral part of the policy development process. The Department will ensure that this includes engagement with statutory and voluntary sector partners (including to reflect the views of those subject to abuse). Ahead of a formal review and evaluation there will be ongoing informal monitoring and review of implementation of the new offence.
Women's Policy Group NI	**States that a gendered definition of abuse and a recognition of gender-based violence against women and girls needs to be included in the legislation.**	While domestic abuse primarily affects women, account needs to be taken of the fact that just under a third of domestic abuse crimes are carried out against men (an increase from 25% in 2004/05) and around 40% of domestic homicides involve males. We would have concerns that the adoption of a gendered definition could send out a message that tackling abuse against men is less important. More generally gendered based violence will be captured by the domestic abuse offence.
Victim Support NI	Agrees with an objective 'reasonable' person test being applied but highlights that it will be necessary for awareness raising and training on the nature and	The Department recognises the importance of training and awareness raising. A multi-agency Task and Finish Group will consider how best this can be progressed. This will include both statutory

	different manifestations of coercive, controlling behaviour to be rolled out in order for the 'reasonable person' standard to work in practice and therefore **recommends that provision for the funding and roll-out of training and awareness-raising initiatives on the law should be included alongside this Bill.** **One aspect missing from this Bill is the protection of migrants who are victims of domestic abuse.** Those with insecure immigration status are especially vulnerable to domestic abuse and less able to report or leave because they may fear that their complaint will be ignored and immigration concerns will take precedence or their leaving the relationship will void their visa. **There should be additional provisions within this law to better protect and support victims of domestic abuse who have insecure immigration status, or an immigration status that is dependent upon their abuser including provision of adequate financial support to enable such victims and their children to safely leave an abusive relationship.**	as well as voluntary and community sector partners. The guidance associated with the new offence, as well as an advertising campaign, will also be important in terms of raising awareness around what constitutes domestic abuse and examples of behaviours that could be captured by the new offence. Access to support services, including specialist support services, is available regardless of the status of an individual. The Department intends to introduce a new advocacy support service next year that would provide assistance to those that have been affected by domestic and/or sexual abuse. More generally the issue of immigration status, which this concern relates to, is a reserved matter that is not within devolved competence. We continue to liaise with Home Office officials on this matter.
Relate NI	**Also recommends additional provision to clarify protections for migrants whose immigration status may be dependent on the person perpetrating**	Access to support services, including specialist support services, is available regardless of the status of an individual. More generally the issue of immigration status, which this concern relates to, is

	abuse or whose immigration status is insecure.	a reserved matter that is not within devolved competence. We continue to liaise with Home Office officials on this matter.
NEXUS	**Questions whether the reference to physical and psychological harm is sufficient to cover emotional harm/abuse or if emotional harm and abuse should be specified.**	Emotional harm and abuse would be encapsulated within the effects of abusive behaviour set out at Clause 2(3) of the Bill.
ICTU	Welcomes the definition of the offence and the definition of abusive behaviour but is **concerned that unless the legislation is set within a policy context which includes robust strategies and action plans, that it in itself will not bring about the changes required to prevent domestic abuse.** **Recommends that the gendered nature of domestic abuse and the fact that it is only one aspect of violence against**	The domestic abuse offence is an integral part of (and set within the context of) the wider seven year domestic and sexual violence and abuse strategy and associated action plans, which is aimed to tackle and address domestic abuse on a multi-agency basis. Both the strategy and actions plan are progressed on a cross Executive basis and reflect a range of work being taken forward by DfC, DE, DoH and DoJ (as well as linkages with DAERA and DfE) to address issues relating to domestic and sexual violence and abuse. Given the experience in other jurisdictions we consider that the new offence can make a material difference to those that are affected by domestic abuse. For example in the first year of operation in Scotland almost 1700 domestic abuse offences were recorded. The guidance associated with the new offence, as well as an advertising campaign, will also be important in terms of raising awareness and bringing about change. While domestic abuse primarily affects women, account needs to be taken of the fact that just under

	women and girls is clearly acknowledged within the legislation. Also recommends that the legislation acknowledges the additional barriers faced by marginalised groups such as black and minority ethnic women, disabled women and LGBT+ people and the specific experiences of migrant women.	a third of domestic abuse crimes are carried out against men (an increase from 25% in 2004/05) and around 40% of domestic homicides involve males. We would have concerns that the adoption of a gendered definition could send out a message that tackling abuse against men is less important. More generally gendered based violence will be captured by the domestic abuse offence. The issue of barriers for marginalised communities is a matter being considered under the seven year domestic and sexual violence and abuse strategy. This is also something that will be reflected within the guidance associated with the new offence.
PCS	Also welcomes the definition of the offence and the definition of abusive behaviour and has similar concerns to those outlined by ICTU. **Believes the legislation must be accompanied by robust strategic equality strategies including, Race, Sex, Disability, LGBT, Age, Religious and political beliefs and anti-poverty/social deprivation, in order to protect the most vulnerable and marginalised groups otherwise the impact of the proposed legislation will be diluted. Legislation and strategies will also be limited in their impact without additional adequate support, resources, funding and training across the public, private and charity sectors.**	The domestic abuse offence is an integral part of (and set within the context of) the wider seven year domestic and sexual violence and abuse strategy and associated action plans, which is aimed to tackle and address domestic abuse on a multi-agency basis. A range of work is also taken forward in the areas stated by other Departments such as the Executive Office and the Department for Communities. Given the experience in other jurisdictions we consider that the new offence can make a material difference to those that are affected by domestic abuse. For example in the first year of operation in Scotland almost 1700 domestic abuse offences were recorded. The guidance associated with the new offence, as well as an advertising campaign,

		will also be important in terms of raising awareness and bringing about change. Impact assessments have been undertaken as part of the policy development process (including from an equality perspective). A multi-agency Task and Finish Group will consider how best training and awareness raising can be progressed. This will include both statutory as well as voluntary and community sector partners.
La Dolce Vita	**Requests consideration is given to including that the offence applies while living in or post separation.**	The domestic abuse offence applies whether individuals are currently, or have previously been, in a relationship and does not require partners/former partners, etc. to be living together. This is considered important given that domestic abuse may increase once individuals have separated.
NICOSSA	**Questions whether there should be a definition of the gravity or length of the effect in relation to the words fear, alarm and distress referring to psychological harm and asks does the legislation intend that a feeling of fear for a momentary period would lead to an offence being committed?**	The issue of extent or gravity of abusive behaviour would be considered as part of the sentencing in the case, with the impact dependant on the individual circumstances of the case. The offence is predicated on the basis that there have to be two or more occasions of abusive behaviour.
Evangelical Alliance	Notes that the offence can be committed regardless of whether or not harm is actually caused to an individual. In this age of rapidly changing social values many words are considered 'harmful' by some people while to others they are perfectly 'reasonable' and not in any way	Ultimately it will have to be considered that there has been abusive behaviour in order for the offence to apply. The offence operates on the basis of a number of checks and balances. The behaviour must in the first instance occur on two of more occasions, be considered abusive (with a range of effects set out), would be considered by a

	intended or perceived to be a cause for harm.	reasonable person to be such, would be likely to cause the person to suffer physical or psychological harm and the offender intends to cause harm or is reckless as to this. All of these conditions have to occur for the offence to be carried out. Police and prosecutors, who are well versed in the necessary evidence and thresholds, would also have to consider that the offence has been committed and that the test for public prosecution (including a public interest test) has been met. Further safeguards also apply in terms of a defence where the behaviour could otherwise, dependant on the circumstances of the case, be considered reasonable. See above in relation to definition of terms. The issue of malicious or vindictive accusations is something that applies to other offences and will not be new for the police and prosecutors.
	Concerned that if key terms such as 'harm' and 'reckless' are not defined and there is a lack of safeguards to prevent malicious or vindictive use of it by either partner in a difficult or toxic relationship the legislation could be abused and victims and trust lost in the process.	As with other legislation there are a wide range of terms in the Bill that attract their ordinary (typically Oxford English dictionary) meaning. The guidance associated with the offence can provide further clarification where considered necessary. On the matter of malicious or vindictive allegations, and how these are dealt with, this will not be new to police given the range of offences that are currently on the statute book a number of which will be between connected individuals (for example harassment offences). This is an issue that will however be considered further as part of discussions with police.

	Also raises questions in relation to the pattern of behaviour and whether it could be inadvertently applied to unintended situations e.g. retrospectively when a friendship ends between two teenagers or in instances of bullying which, while not acceptable, may not be a criminal offence. Asks how it could be prevented from being conflated or confused with behaviour in an unstable romantic relationship which is immature, jealous, undesirable but again not necessarily criminal.	The examples given would not in and of themselves be considered to meet the necessary criteria for the offence, in terms of, for example, a friendship ending or those in a relationship being immature. A number of conditions must apply for the offence to occur, as set out above, with checks and balances inherent to this.
NSPCC	Warmly welcomes the creation of a specific offence of domestic abuse for Northern Ireland, particularly the inclusion of coercive and controlling behaviours within the definition of abusive behaviour. However, **believes the scope of the offence must be amended to adequately reflect how children and young people are affected by domestic abuse. At present the offence can apply to individuals of any age which contrasts with the Domestic Abuse Bill currently before Westminster which explicitly states that the offence being created applies where both A and B are aged sixteen or over. Strongly believes**	The Westminster Domestic Abuse Bill provides that their definition of domestic abuse applies to those aged 16 and over. The offence in England and Wales, which is entirely separate to the definition of domestic abuse, is provided for through Section 76 of the Serious Crime Act 2015. This is unaffected by the provisions in the Domestic Abuse Bill. Similar to the situation locally that offence applies to offenders over the age of criminal responsibility, as well as victims under 16 (except where parental responsibility applies). While appreciating the concerns expressed it is important to ensure that the offence is available in cases of domestic abuse against parents, vulnerable elderly grandparents as well as ongoing and

	this Bill should be amended to include a similar minimum age threshold so children cannot be convicted of the proposed offence. Indicates that including children under the age of sixteen in the statutory definition of the domestic abuse offence in terms of their own relationships risks confusing the child protection response with cases being dealt with through a more punitive, criminal justice lens rather than a more protective, health and social care-based focus. Both in cases where a child is experiencing abuse and where a child is engaged in harmful behaviours, the response should be child-centred, seek to prevent further harm and promote recovery. In the majority of cases a criminal justice response would not be the most helpful or appropriate response and therefore is of the view that the criminal offence should not apply to children.	persistent abuse in teenage relationships. As with all other offences, in deciding whether to charge a young person, consideration will be given to the circumstances of the case, whether the test for public prosecution (including a public interest test) is met and what alternative disposals may be available. Youth Justice Agency staff are trained to recognise and respond to issues of domestic abuse in all its forms, whether a child is a victim or perpetrator. They are required to negotiate the procedural and process requirements of both the justice and safeguarding systems as they impact on children and adults, whilst supporting service users to engage with a range of support requirements and safety plans. Specialised interventions are delivered as part of community or court-ordered disposals, often in collaboration with other statutory and voluntary organisations. The experience in other jurisdictions are that the number of young people charged with an offence has been relatively low. We understand that in Scotland, for example, around 1.5% of those reported and prosecuted were under the age of 18 (around 15 - 20 individuals), while in England and Wales we understand that only two individuals under the age of 18 have been convicted. The Victim Charter provides that young people are entitled to:

		• have access to a victim support service provider and be provided with a Young Witness Pack by that service provider; • have the Victim and Witness Care Unit take appropriate steps to help them get the support they need as a result of the needs assessment process; and • speak to someone specially trained to listen to them and help then get over the crime, at any time during the investigation (and trial). This could be therapy or counselling. In terms of those who display harmful behaviour their needs should be considered separately from the needs of the person being abused. There should be a co-ordinated approach by Health and Social Care Trusts, the police, Public Protection Arrangements NI, the Public Prosecution Service, victim support services and youth justice bodies. Schools and colleges may need to be involved as part of the co-ordinated response to provide education and awareness so that relevant professionals from this sector can understand the risks the young person may pose to other young people. This co-ordinated response should include working with the young person whose behaviour has been harmful and those working with the young person who has been harmed.
	NSPCC also believes that the offence should capture the experiences of	Children and young people who abuse others should be held responsible for their abusive

	children living within the context of an abusive relationship between adults and must go further and more directly recognise the impact on children of the relationship between A and B, not merely as an aggravating factor as provided for in Clause 9 but as an offence in its own right. NSPCC recommends an amendment to the statutory definition which recognises that a child (C) is directly impacted by the behaviour which A directs at B.	behaviour, while being identified and responded to in a way that meets their own needs as well as protecting others. Professionals should consider whether a young person who abuses others should be the subject of a Child Protection Case Conference if he or she is considered personally to be at risk of continuing significant harm. The Department gave careful consideration to the scope of the domestic abuse offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member (except where parental responsibility applies, in order to prevent criminalisation of this) and that aggravation related to a child could be reflected while preventing criminalisation of parental responsibility. Having considered the matter further, and taking account of the concerns expressed, the Department is having discussions with colleagues in the Department of Health around a possible amendment to child protection provisions (contained in health legislation but amendment of which could be brought forward through the Domestic Abuse Bill subject to agreement) to make it explicit that where a child is ill treated, that this would also include non-physical abuse. Such provision would make clear that it would be an offence whether the suffering or injury caused to a child was physical or psychological in nature, for example isolation, humiliation or bullying.

		The Department also considered, in conjunction with core statutory and voluntary sector partners, whether to include a statutory definition of domestic abuse in the Bill ahead of it being finalised. Following this it was agreed that, given the detail set out in the Bill in relation to what constitutes abusive behaviour (and therefore domestic abuse), a standalone definition was unnecessary. Furthermore, to provide for a definition in the Bill would not materially change the provisions or serve a legislative purpose, given that any such provision would be likely to simply state domestic abuse means abusive behaviour as set out in Clause 2.
NIHRC	The Commission states that it is important that the statutory offence reflects the gendered impact of domestic violence and abuse, as such recognition will have positive implications for the way resources are allocated to support survivors and **recommends consideration is given to including reference to gender-based violence in clause 1 as a form of domestic abuse.** The Commission states that for the Bill to be human rights compliant, the provisions must protect and support all individuals who experience domestic abuse regardless of their immigration status. **The Bill should therefore specifically state that the provisions within apply**	While domestic abuse primarily affects women, account needs to be taken of the fact that just under a third of domestic abuse crimes are carried out against men (an increase from 25% in 2004/05) and around 40% of domestic homicides involve males. We would have concerns that the adoption of a gendered approach could send out a message that tackling abuse against men is less important. More generally gendered based violence will be captured by the domestic abuse offence. The offence will apply across the board regardless of an individual victim's immigration status. It is not considered necessary to stipulate this as part of the legislation. More generally the issue of immigration status, which this concern relates to, is a reserved matter that is not within devolved competence. We

	regardless of an individual's immigration status.	continue to liaise with Home Office officials on this matter.
Bar of NI	The Bar recognises that the proposed reasonable person test may be to the benefit of the prosecution in not requiring to show that B was in fact adversely impacted by the behaviour. **However, reliance on an objective test is problematic for a number of reasons.** For example, the proposed test requires the reasonable person to assess the likely impact on B. It invites the fact finder to decide how the reasonable person might consider B, as an individual, is likely to be impacted. That in itself may necessitate that some evidence be provided about the impact on B or about B as an individual. I**t is possible that there will rarely be objective and independent proof of any complaint of psychological harm in these situations, unless records of a diagnosed condition can be provided, and therefore there is a risk that the test may ultimately need to rely on B's evidence to actually secure a conviction in practical terms.**	The purpose of the provision is not to benefit the prosecution, rather it is to ensure that a case can be taken forward where an individual may have suffered considerable abuse over a period of time but due to the extent and nature of this it has become 'normalised' and/or as a result of this the person is unaware that they have been abused. An example of this would be the Hart brothers, who his field have heard speak, whose mother and sister where killed by their father. The Domestic Homicide Review in that case stated that they "had been suffering intense domestic abuse for many years and didn't know this … as there was no physical abuse". These behaviours are what we are dealing with in the bill. We do not consider that as part of this that evidence will necessarily have to be provided of the impact on an individual where they may consider that no harm has been caused. Rather what will be important is that there is evidence of abusive behaviour. The provisions focus on the actions of the perpetrator and the intention to either cause harm or be reckless as to this. We have also liaised with prosecutorial colleagues in Scotland, whose legislation is framed in similar manner and which is often seen as the gold standard in this area, who have advised that they have not encountered practical difficulties with the operation of their offence.

		More generally in terms of reasonable person tests this mirrors that in Scotland, while the England and Wales provisions which are tried and tested also include a reasonable person element, with a good precedent for this.
	Furthermore, the reference at clause 1(3) that psychological harm includes 'fear, alarm and distress' with no requirement to demonstrate the actual impact on the victim is a low bar and potentially gives considerable discretion to the PPS in making decisions around the which complaints should be prosecuted.	In terms of a reference to psychological harm being a low bar, it must be remembered that there are a number of conditions that must be met for the offence to be committed, with checks and balances inherent in this. The behaviour must in the first instance occur on two or more occasions, be considered abusive (with a range of effects set out), would be considered by a reasonable person to be such, would be likely to cause the person to suffer physical or psychological harm and the offender intends to cause harm or is reckless as to this. All of these conditions have to occur for the offence to have occurred out. Police and prosecutors, who are well versed in the necessary evidence and thresholds, would also have to consider that the offence has been committed and that the test for public prosecution (including a public interest test) has been met. Further safeguards also apply in terms of a defence where the behaviour could otherwise, dependant on the circumstances of the case, be considered reasonable.
	We would highlight that this, when coupled with the broad list of family members in clause 5, will potentially allow a considerable range of	In terms of family member the scope in the Bill reflects the cross Departmental seven year domestic and sexual violence and abuse strategy. To do otherwise would be contrary to the position adopted

	behaviours in intimate and family relationships to fall under the ambit of this Bill. Despite this, the Bar recognises that there is a fine balance which must be struck between ensuring the safe prosecution of alleged perpetrators of domestic abuse and at the same time ensuring that the victims of domestic abuse do not endure further trauma as part of a criminal trial by having to prove to the court that the behaviour has caused them psychological harm. We appreciate that the rationale behind the Bill is a genuine attempt to improve the operation of the system and recognise the very difficult experiences of victims. **The Bar is of the view that the inclusion of a clear definition of domestic abuse in the legislation would be helpful.**	in that Executive strategy. It also reflects the current police position whereby family members are deemed to include mother, father, brother, sister, son, daughter, grandparents, in-laws or stepfamily. Both police and PPS have indicated that they are content with the current scope of family member in the Bill. In considering the scope of family members the Department was keen to ensure that the range was comprehensive but not so broad, covering all possible family members, that it would negatively and adversely impact upon what society and the courts consider to be domestic abuse, in the context of committing an offence and the seriousness associated with this. The Department considered, in conjunction with core statutory and voluntary sector partners, whether to include a statutory definition of domestic abuse in the Bill ahead of it being finalised. Following this it was agreed that, given the detail set out in the Bill in relation to what constitutes abusive behaviour (and therefore domestic abuse), a standalone definition was unnecessary. Furthermore, to provide for a definition in the Bill would not materially change the provisions or serve a legislative purpose, given that any such provision would be likely to simply state domestic abuse means abusive behaviour as set out in Clause 2.

Education Authority	The EA **questions whether if someone abuses another on a singular occurrence and other forms of abuse e.g. modern slavery and exploitation and coercive control related to immigration status falls within the definition in the Bill and whether they can be covered by the guidance developed under the Bill.**	The offence will apply where there are two or more occasions of abusive behaviour, as set out in the Bill, where two individuals are personally connected. The guidance associated with the offence will set out examples of abusive behaviour.
NIACRO	States that **there may be an increase in women who commit and/or are accused of offences of coercive or emotional abuse and asks how the criminal justice system is prepared to address such an increase.** **Also questions whether the inclusion of the new offence could leave women more vulnerable to being falsely accused of this crime and if the allegations are found to be false how they will be dealt with.**	The offence will apply to all who commit domestic abuse, regardless of gender. While there will be an increase in the number of offenders under the new offence it is envisaged that the vast majority of cases would have otherwise have been progressed through the criminal justice system under different charges. In terms of the suggested increase in women offenders the Department is currently developing a strategy to support and challenge women and girls who come into contact with the justice system. The strategy to empower change is likely to have a three-strand approach, focusing on prevention/diversion, community and custody. A public consultation is due to launch in the Autumn. On the matter of false allegations, and how these are dealt with, this will not be new to police given the range of offences that are currently on the statute book a number of which will be between connected individuals (for example harassment offences). This is an issue that however will be considered further as part of discussions with police.

	Highlights that the legislation will **only be effective if it is accompanied by comprehensive training for professionals such as PSNI, PPS, healthcare professionals etc.** **Recommends that the legislation should be accompanied by mandatory training for the judiciary on domestic abuse.**	The Department recognises the importance of training and awareness raising. A multi-agency Task and Finish Group will consider how best this can be progressed. Discussions are also being held with the Judicial Studies Board in terms of raising awareness among the judiciary, including considering what lessons can be learnt from other jurisdictions.
Ulster University – Dr Tony McGinn and Dr Susan Lagdon	States that domestic abuse differs from other violence due to the intimate relationships involved, which can facilitate coercive control of victims particularly where children and vulnerable family members may be concerned. Notes that while it is important to keep victims and survivors of domestic abuse at the centre of the judicial process it should not follow that they are in a position to veto prosecution efforts which sometimes seems to be the case at present and **questions whether this legislation responds to this shortfall in existing procedures and provides for prosecutions to go ahead regardless of victims' interventions/without the participation of the victim.**	As is the case at present investigations and prosecutions will be progressed where the necessary evidence is available. Work is ongoing with the judiciary around the piloting of listing arrangements at Laganside Magistrates court later in the year, which would enable the clustering of domestic assault cases, accompanied by improved file quality processes and support for high risk repeat victims. There will be an increased focus on ensuring that prosecutions can proceed in the absence of a victim giving evidence.

CLAUSE 2 – WHAT AMOUNTS TO ABUSIVE BEHAVIOUR

EFM

This clause sets out what constitutes abusive behaviour for the purpose of the offence. The description is non-exhaustive and it therefore remains open to the court to determine in any individual case that the accused's behaviour was abusive in some other way, beyond the ways described.

Subsection (2) provides that abusive behaviour includes conduct which is violent or threatening (including both physical and sexual violence). Subsection (2) also covers behaviour directed at an individual, their child or any other person where the purpose of the behaviour is to have certain effects on the partner/connected person or where a reasonable person would consider it likely to have one or more of the effects.

Subsection (3) sets out, in connection with this latter aspect of the offence, the relevant effects that can indicate that behaviour is abusive. This is intended to ensure that, for example, psychological abuse, or controlling or coercive behaviour that could not currently be prosecuted under existing offences, falls within the definition of abusive behaviour (as well as violent or threatening behaviour).

Subsection (3)(a) deals with behaviour which makes the partner/connected person dependent on or subordinate to the accused. This could include, for example, preventing the partner/connected person from having access to money, forcing them to leave their job or education, taking charge of household decision-making to the exclusion of them or treating them as a domestic slave.

Subsection (3)(b) covers behaviour which has the effect of isolating a person from friends, family members or other sources of social interaction or support. This could include, for example, controlling a partner's or connected person's movements; access to their phone or other forms of communication; not allowing visits from or to the partner's or connected person's friends or family, or deliberately failing to pass on messages from friends or family.

Subsection (3)(c) refers to behaviour which has the effect of controlling, regulating or monitoring the day-to-day activities of a partner/connected person. This could include, for example, checking their phone, e-mail or social media use, controlling what clothes they can or cannot wear, or placing unreasonable requirements on them, for example, to prepare meals in a particular way at a particular time every day or to answer the phone within three rings.

Subsection (3)(d) deals with behaviour which has the effect of depriving or restricting the freedom of action of a partner/connected person. This addresses behaviour which strips that person of their autonomy, for example, preventing them from attending work or college, preventing them from leaving the house alone, insisting on accompanying them to medical appointments, or taking decisions for them in relation to private, individual matters that a person would normally decide for themselves.

Subsection (3)(e) refers to behaviour which has the effect of frightening, humiliating, degrading or punishing a partner/connected person. This could include, for example, abusive name-calling, threats of self-harm, playing 'mind games' that cause the partner/connected person to doubt their self-worth, controlling a partner/connected person's access to the toilet or forcing them to eat food off the floor.

Subsection (4)(a) provides that the reference to violent behaviour includes both physical and sexual violence. Subsection (4)(b) provides that reference in the clause to a child means someone under 18 years of age.

Organisation	**Comments/Issues relating to Clause 2**	**Department of Justice Comments/Position**
Men's Advisory Project	States that in terms of securing convictions more rigorous and innovative evidence collection approaches to support successful prosecutions must be considered.	As part of the operationalisation of the offence, and the development of guidance, consideration will be given to the types of evidence that may be provided in a case. As is the case at present investigations and prosecutions will be progressed where the necessary evidence is available. Work is ongoing with the judiciary around the piloting of listing arrangements at Laganside Magistrates court later in the year, which would enable the clustering of domestic assault cases, accompanied by improved file quality processes and support for high risk repeat victims. There will be an increased focus on ensuring that prosecutions can proceed in the absence of a victim giving evidence.
	Highlights threats to destroy or withhold personal possessions can	The domestic abuse offence applies whether individuals are currently, or have previously been, in

	have formed a pattern of domestic abuse during the relationship which is further administered post-separation and the destruction of inherited family keepsakes or photographs can cause long lasting anxiety and pain. **Also notes that spiritual abuse is not mentioned – MAP often witnesses men facing their children being removed from their previously attended religion or school post separation or alternatively being moved into a religion when there was agreement between the parents that this would not be the case.**	a relationship. This is considered important given that domestic abuse may increase once individuals have separated. The approach taken in the Bill is to reference types of abusive behaviours, as well as the effects of these, and not by reference to the form in which those behaviours can manifest (such as abuse through parental alienation or spiritual abuse). To include a specific list of types of abuse could risk creating a hierarchy and mean that types of abuse not listed may be deemed to be less serious or more worryingly not abuse at all. We therefore consider it important to focus on behaviour being abusive and the effects that this may have as the most effective means through which to capture different forms of abuse. The guidance associated with the offence can clearly set out examples of types of abusive behaviour and will be considered by a multi-agency Task and Finish Group, through which a range of views can be reflected.
Education Authority	States that **the term reckless under 2(b)(ii) should be defined further.** EA also notes that coercive control can often be perpetrated via electronic and	As with other legislation there are a range of terms in the Bill that attract their ordinary (typically the Oxford English dictionary) meaning. The guidance associated with the offence can provide further clarification in relation to such terminology where considered necessary. The Bill provides, through Clause 4, that abusive behaviour is behaviour of any kind. This would

	'online' forms **and suggests the Department should consider developing guidance in relation to how this new legislation should be interpreted with regard to how perpetrators of domestic abuse use electronic means.**	include behaviour that is carried out by electronic, digital or online means. The guidance associated with the offence can provide further information in relation to this.
Safeguarding Board for NI	The Board welcomes the comprehensive list of behaviours. **It also highlights the growing use of technology facilitated domestic abuse which is an increasing area perpetrators can use to abuse, stalk and control their victims and advocates for training for criminal justice agencies around technology facilitated domestic abuse and how it can be used by perpetrators to harm and control their victims thus perpetrating violence.**	The Bill provides, through Clause 4, that abusive behaviour is behaviour of any kind. This would include behaviour that is carried out by electronic, digital or online means. The guidance associated with the offence can provide further information in relation to this. The Department recognises the importance of training and awareness raising. A multi-agency Task and Finish Group will consider how best this can be progressed. This will include statutory as well as voluntary and community sector partners.
NEXUS	Broadly agrees with the definition of abusive behaviour however **given that economic abuse is a common issue for victims of domestic abuse there is an argument that it should be specified in the definition.**	The approach taken in the Bill is to reference types of abusive behaviours, as well as the effects of these, and not by reference to the form in which those behaviours can manifest (such as economic abuse). It is considered that economic abuse would fall within the effects that are listed in the Bill. To include a specific list of types of abuse could risk creating a hierarchy and mean that types of abuse not listed may be deemed to be less serious or more worryingly not abuse at all. We therefore consider it important to focus on behaviour being abusive and the effects that this may have as the

		most effective means through which to capture different forms of abuse. The guidance associated with the offence can clearly set out examples of types of abusive behaviour, such as economic abuse, and will be considered by a multi-agency Task and Finish Group, through which a range of views can be reflected.
Derry City and Strabane District Council	**The Council assumes that verbal abuse is included under abusive (non-physical) behaviour?**	The Bill provides that (abusive) behaviour will include behaviour of any kind, where this is considered to be abusive, subject to the other conditions of the offence being met.
Belfast DSVP	Welcomes the comprehensive list of behaviours associated with domestic abuse in all its forms **but notes the growing use of technology facilitated domestic abuse and highlights this is an increasing area perpetrators can use to abuse, stalk and control their victims. Significant training for the criminal justice agencies around technology facilitated domestic abuse and how it can be used by perpetrators to gain omnipresence and instil fear in their victims is therefore necessary.**	The Bill provides, through Clause 4, that abusive behaviour is behaviour of any kind. This would include behaviour that is carried out by electronic, digital or online means. The guidance associated with the offence can provide further information in relation to this. The Department recognises the importance of training and awareness raising. A multi-agency Task and Finish Group will consider how best this can be progressed. This will include statutory as well as voluntary and community sector partners.
La Dolce Vita Project	**Recommends that consideration should be given to including:** **i) Isolating of children from family members** **ii) breach of family contact orders, which is determined at time of**	The approach taken in the Bill is to reference types of abusive behaviours, as well as the effects of these, and not by reference to the form in which those behaviours can manifest (such as abuse through parental alienation or deliberate isolation from family members). However, this could

	assessment as an intentional behaviour, to purposely delay court proceedings, causing psychological and emotional harm on parent, child, grandparent, caregiver. **iii) child, parent child relational distress.** **Consideration also needs to be given to identifying in the bill parental alienation as an abusive behaviour causing potential or actual harm to a child, parent, grandparent, caregiver e.g. "the wilful attempt by one parent to take control of a child and intentionally eliminate the role and responsibility of the other parent, or family member resulting in traumatic separation or loss".**	constitute abusive behaviour, depending on the circumstances of the case, and fall within the effects that are listed in the Bill. To include a specific list of types of abuse could risk creating a hierarchy and mean that types of abuse not listed may be deemed to be less serious or more worryingly not abuse at all. We therefore consider it important to focus on behaviour being abusive and the effects that this may have as the most effective means through which to capture different forms of abuse. The guidance associated with the offence can clearly set out examples of types of abusive behaviour and will be considered by a multi-agency Task and Finish Group, through which a range of views can be reflected.
MANi	Takes the view that every child deserves to have a relationship with a parent who wants to be in their life and highlights that, in many cases they know of, children's rights to see their father do not seem to be upheld. **States that deliberately keeping a child from another parent is continuing the abuse by other means and parental alienation must be covered in the Bill.**	The approach taken in the Bill is to reference types of abusive behaviours, as well as the effects of these, and not by reference to the form in which those behaviours can manifest (such as abuse through parental alienation or deliberate isolation from family members). It is considered that parental alienation could fall within the effects that are listed in the Bill. To include a specific list of types of abuse could risk creating a hierarchy and mean that types of abuse not listed may be deemed to be less serious or

		more worryingly not abuse at all. We therefore consider it important to focus on behaviour being abusive and the affects that this may have. The guidance associated with the offence can clearly set out examples of types of abusive behaviour and will be considered by a multi-agency Task and Finish Group, through which a range of views can be reflected.
NICCOSA	**Asks that in relation to 2(3)(a) consideration is given to changing the words "making B dependent on" to "intentionally or recklessly making B dependent on" as in some relationships B can become dependent on A without there being an intention to do so on the part of A.** **Also questions if clause 2(5) is necessary at all and indicates that allowing definitions to be unlimited when there are criminal consequences surely has implications for the rights of the defendant.**	This is already provided for through clause 1(2) and the requirements for the offence, which are that the behaviour would be likely to cause physical or psychological harm and that the offender intends to cause such harm by the behaviour or is reckless as to whether it would cause such harm. Given that the relevant effects at clause 2(3) need to be read in conjunction with clause 1(2) for the offence to occur the suggested change is considered unnecessary. Clause 2 does not provide that the definition is unlimited, nor widen the powers available within the clause, rather it is intended to provide legislative clarity that none of the paragraphs within subsections two and three (dealing with abusive behaviour and the relevant effects) will limit the meaning of any of the other paragraphs in those subsections. It is important to note that the offence operates on the basis of a number of checks and balances. The behaviour must in the first instance occur on two or

		more occasions, be considered abusive (with a range of effects set out), would be considered by a reasonable person to be such, would be likely to cause the person to suffer physical or psychological harm and the offender intends to cause harm or is reckless as to this. All of these conditions have to occur for the offence to be carried out. Police and prosecutors, who are well versed in the necessary evidence and thresholds, would also have to consider that the offence has been committed and that the test for public prosecution has been met (including a public interest test). Further safeguards also apply in terms of a defence where the behaviour could otherwise, dependant on the circumstances of the case, be considered reasonable. Overall the Bill is considered to be human rights compliant.
NIWEP	While NIWEP welcomes the definition of abusive behaviour as set out in this clause, **they state that it is imperative that coercive control is criminalised as a specific offence as urgently as possible.**	The approach taken in the Bill is to reference types of abusive behaviours, as well as the effects of these, and not by reference to the form in which those behaviours can manifest (such as coercive control). It is considered that coercive control would fall within the effects that are listed in the Bill. To include a specific list of types of abuse could risk creating a hierarchy and mean that types of abuse not listed may be deemed to be less serious or more worryingly not abuse at all. We therefore consider it important to focus on behaviour being abusive and the effects that this may have as the most effective means through which to capture different forms of abuse.

		The guidance associated with the offence can clearly set out examples of types of abusive behaviour, such as coercive control, and will be considered by a multi-agency Task and Finish Group, through which a range of views can be reflected.
PSNI	Notes that 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 in the first draft of the Bill and 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*' the PSNI is concerned that this does not provide for an**	Formal drafts of the Bill did not contain reference to coercive behaviour. The approach taken in the Bill is to reference types of abusive behaviours, as well as the effects of these, and not by reference to the form in which those behaviours can manifest (such as controlling and coercive behaviour). It is considered that controlling and coercive behaviour would fall within the effects set out at clause 2(3) of the Bill. To include a specific list of types of abuse could risk creating a hierarchy and mean that types of abuse not listed may be deemed to be less serious or more worryingly not abuse at all. As with other legislation there are a wide range of terms in the Bill that attract their ordinary (typically Oxford English dictionary) meaning. Interpretative provisions are typically provided where there are material complex provisions in the Bill for which there would be significant difficulty of interpretation. For the domestic abuse offence the ultimate question will be is the behaviour considered to be abusive.

	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 the view of the PSNI that this is imminently sensible as an objective test.	The guidance associated with the offence can clearly set out examples of types of abusive behaviour, such as coercive and controlling behaviour, and provide further clarification where considered necessary. The guidance will be considered by a multi-agency Task and Finish Group, through which a range of views can be reflected. The police will be an integral part of this and we will work closely to ensure that the guidance meets their operational needs.
South Eastern DSVP	**The term coercive control is somewhat hidden in the Bill. There is significant research to highlight that coercive control correlates significantly with serious harm and femicide and the term should be referenced or highlighted more within the Bill and subsequent guidance. The term "gas-lighting" should also be referenced both within the Bill and guidance given it is another term synonymous with psychological manipulation and harm.**	The approach taken in the Bill is to reference types of abusive behaviours, as well as the effects of these, and not by reference to the form in which those behaviours can manifest (such as controlling and coercive behaviour). To include a specific list of types of abuse could risk creating a hierarchy and mean that types of abuse not listed may be deemed to be less serious or more worryingly not abuse at all. It is considered that coercive and controlling behaviour would be captured by the effects that are set out at clause 2(3) of the Bill. As with other legislation there are a wide range of terms in the Bill that attract their ordinary (typically Oxford English dictionary) meaning. Interpretative provisions are typically provided where there are material complex provisions in the Bill for which there would be significant difficulty of interpretation. For the domestic abuse offence the ultimate question will be is the behaviour considered to be abusive

		The guidance associated with the offence can clearly set out examples of types of abusive behaviour, such as coercive and controlling behaviour, and provide further clarification where considered necessary. The guidance will be considered by a multi-agency Task and Finish Group, through which a range of views can be reflected. The police will be an integral part of this and we will work closely to ensure that the guidance meets their operational needs.
South Eastern Health and Social Care Trust	**Is also of the view that the term coercive control should be referenced or highlighted more within the Bill and subsequent guidance for the reasons outlined by the South Eastern DSVP.**	The approach taken in the Bill is to reference types of abusive behaviours, as well as the effects of these, and not by reference to the form in which those behaviours can manifest (such as coercive control). To include a specific list of types of abuse could risk creating a hierarchy and mean that types of abuse not listed may be deemed to be less serious or more worryingly not abuse at all. It is considered that coercive and controlling behaviour would be captured by the effects that are set out at clause 2(3) of the Bill.
Bar of NI	Notes that the effects listed at 2(3) are very broad and are behaviours that have been routinely detailed in academic literature as typical of abusive behaviour yet such behaviours that are well documented as being typical of abusive behaviours may not be viewed as such by the reasonable person. Important work has been done by a range of organisations to combat many of the	Clauses 2(2) and 2(3) are explanatory in terms providing indications of what may be abusive behaviour and the effects of this. In the absence of, and even with these provisions, the consideration for the court will ultimately be has there been abusive behaviour. Furthermore, in the absence of these provisions there would be a lack of clarity and consistency across courts as to what potential effects would be. Clarity, in terms of the legislation setting out who is involved, the behaviour and

	myths and misconceptions which inform attitudes and understanding of domestic abuse. However, this issue still persists and therefore **there may be some value in considering whether the offence should require evidence of harm to B in order to prevent any myths or misconceptions allowing a perpetrator to escape conviction.**	effects that can occur is considered key for practitioners including police, the Public Prosecution Service, the defence and courts. This will also be augmented by the guidance that it to be produced. It is considered that together these will improve understanding more generally. The purpose of the requirement that harm does not have to caused is to ensure that where domestic abuse has occurred that an offender cannot escape justice where, for example, the abuse is so ingrained and been carried out for so long that it has been normalised with the effect that the victim of the abusive behaviour does not consider that they have been abused. Furthermore, the provisions are similar to those in place in Scotland, which has often been described as the gold standard in this area, with higher number of cases being progressed through their criminal justice system than was the case when a similar type of offence was introduced in England and Wales.
	The Bar expressed concern in response to the DOJ consultation in April 2016 that the criminalisation of behaviours, such as those listed in clause 2(3) of the Bill, must be contextualised if the legislation is to achieve its aim. As previously noted, to achieve this it is necessary to distinguish coercive control from other	In terms of distinguishing coercive control from other undesirable incidents of abusive it is important to ensure that non-physical abusive behaviour is not limited to only coercive control and rather recognises that abusive behaviour can take a range of forms including aspects such as physical or sexual abuse; violence or threatening behaviour; controlling or coercive behaviour; economic, financial or emotional abuse. It is considered that

	undesirable incidents of behaviour which shouldn't necessarily be subject to the criminal law. The Bar appreciates that to incorporate such a distinction into legislation is complex and that this has been attempted in this Bill by the reference to "a course of behaviour" which is abusive in clause 4(4) defined as being on at least two occasions. Whilst this definition avoids criminalisation of single isolated incidents, the Bar is of the view that it does not capture or reflect the distinction between coercive control and other behaviours which should not necessarily be subject to potential criminal sanctions. For example, the legislation as drafted would potentially capture within it the behaviour of one partner who suspects the other partner of having an affair and monitors that individual's phone or social media which could result in a prosecution.	this goes well beyond undesirable behaviour and is behaviour that should be criminalised. To do otherwise would severely limit the scope of the new domestic abuse offence and the ability to effectively deal with non-physical domestic abuse. In terms of concern that a partner having an affair would come within the scope of the offence consideration needs to be given to the checks and balances that apply with the offence. The offence is not intended to criminalise normal friction that may occur within a relationship or family. The crux of the offence is that there has been criminally abusive behaviour which meets the conditions set out in the Bill, which operates on the basis of a number of checks and balances. The behaviour must in the first instance occur on two or more occasions, be considered abusive (with a range of effects set out), would be considered by a reasonable person to be such, would be likely to cause the person to suffer physical or psychological

		harm and the offender intends to cause harm or is reckless as to this. All of these conditions have to occur for the offence to be carried out. Police and prosecutors, who are well versed in the necessary evidence and thresholds, would also have to consider that the offence has been committed and that the test for public prosecution (including a public interest test) has been met.
	In addition, given the range of personal relationships that the Bill applies to under the use of 'members of the same family' in clause 5, the Bill could also potentially apply to a wide range of scenarios involving family disagreements. For example, this Bill could apply if an individual had a gambling addiction and a family member intervened to restrict their 'freedom of action' to try and stop this individual from spending money with the aim of protecting them. **The Bar is of the view that a defence of reasonableness must be available in respect of the offence of abusive behaviour, albeit the Bill offers a limited definition of reasonableness at clause 12 with two examples provided in the accompanying explanatory memorandum.**	Further safeguards also apply in terms of a defence where the behaviour could otherwise, dependant on the circumstances of the case, be considered reasonable – a defence of reasonableness - for example where a person has a gambling addiction and restrictions may be needed in term of who they associate with. In terms of limited examples in the explanatory memorandum of what may be considered reasonable this is a short document, intended to provide an overview; even a more substantive document cannot cover every single eventuality that may occur. The guidance associated with the offence can provide further information in relation this.

	We would reiterate that there needs to be continuing education as to the complex type of behaviour that manifests coercive control. In relation to our example above at paragraph 12, one partner who monitors the other's phone may indeed be the individual who is actually having an affair but is applying their standards to their partner. This monitoring of calls may be just one element forming part of other behaviours which constitute coercive control. **Effective public education will be key in addressing these difficult scenarios as we move away from the idea that a criminal offence arises from one action as opposed to the cumulative effect of various different actions.** It is important to recognise that at the time of intervention by the justice system, the victim may no longer see that the controlling behaviour they are being subjected to as abusive due to the cumulative nature of it. This has been a problem encountered by many in the criminal and family justice system for years when even after a prosecution the parties reconcile with no change of behaviour.	In terms of education and awareness raising a multi-agency Task and Finish Group will consider how best this can be progressed. This will include statutory as well as voluntary and community sector partners. The Department also intends to bring forward a multi-media advertising campaign, building on the previous 'See the Signs' campaign to raise public awareness of the new offence. The guidance associated with the new offence, which will be published, will also be central to providing information and raising awareness as what constitutes domestic abuse. The inability to see that the controlling behaviour they are subjected to as being abusive is one of the key reasons as to the way the Bill has been drafted.
NIACRO	Welcomes the extended definition of the offence and the abusive behaviour,	The issue of barriers for marginalised communities is a matter being considered under the seven year

	however there is a need to establish strategies for addressing harm caused to those who are LGBTQ and to develop gender specific strategies to serve as guidelines to establish support and best practice.	domestic and sexual violence and abuse strategy. Wider gender specific strategies would not be a matter for the Department to progress though we would have an interest in any work in this area.
Huntington's Disease Association NI	**Questions whether any provision has been made for the protection of victims from contact by the defendant post-reporting/post-conviction/release?** **Also is online activity such as the publication of photos, names, medical information and personal material covered?**	Where there are concerns in relation to safety of an individual there would be the option of applying for non-molestation or restraining orders. In the context of the Bill the domestic abuse offence applies whether individuals are currently, or have previously been, in a relationship. This is considered important given that domestic abuse may increase once individuals have separated. The Bill provides, through Clause 4, that abusive behaviour is behaviour of any kind. This would include behaviour that is carried out by electronic, digital or online means. The guidance associated with the offence can provide further information in relation to this.

CLAUSE 3 – IMPACT OF BEHAVIOUR ON VICTIM

EFM

This clause provides that the partner/connected person need not have actually suffered physical or psychological harm for the offence to be committed. It also states that it is not necessary for the effects of the behaviour covered by clause 2(3) (such as dependency, subordination, isolation, control, etc.) to have actually been suffered by the partner/connected person for the offence to have been committed.

This is because a reasonable person test applies both in clause 1(2)(a) in relation to physical or psychological harm and clause 2(2)(c)(ii) in relation to 'relevant effects'. It is therefore sufficient that a reasonable person would consider it likely that the behaviour would result in the partner/connected person suffering physical or psychological harm, or experiencing a 'relevant effect'. So, for example, clause 2(2)(c) would cover behaviour which a reasonable person would consider likely to frighten, humiliate, degrade, punish or intimidate the partner/ connected person, irrespective of whether they actually suffer fear, humiliation, degradation, punishment or intimidation.

In turn, this clause clarifies that evidence is not prevented from being presented of actual harm, or effects arising, as a result of the alleged course of behaviour or the effects that the behaviour actually had on the partner/connected person. Such evidence therefore remains relevant in the case.

Organisation	Comments/Issues relating to Clause 3	Department of Justice Comments/ Position
Jim Allister MLA	It is important to **note that any suggestion that there have been successful prosecutions in Scotland, where no actual harm was caused, as stated to the Assembly, is not borne out by actual data.**	We have been advised that the offence in Scotland, which is on a similar basis whereby harm does not have to be caused, is operating well. As the Scottish offence only came into force on 1 April 2019, published statistics are not yet available. We understand that it has a higher prosecution and conviction rate than England and Wales had at the outset. While figures are not collected as to whether the

		case involved actual harm or a relevant effect upon the victim, we are not aware of any issues being raised in Scotland with regards to harm not having to be actually caused. It is considered that harm should not have to be caused for the offence to apply as some victims may be resilient to the abuse, or it may have become normalised, particularly if it has been going on for many years.
NICCOSA	Clause 3 (1) and 3(2) - **in the circumstances where behaviour is alleged and there are no effects, should caution be considered in the evidence required for such an offence to be made out, in terms of the evidence required?**	What will be important is that there is evidence of abusive behaviour. The provisions focus on the actions of the perpetrator and the intention to either cause harm or be reckless as to this. We have also liaised with prosecutorial colleagues in Scotland, whose legislation is framed in a similar manner and which is often seen as the gold standard in this area, who have advised that they have not encountered practical difficulties with the operation of their offence. Operationally it will be for the police to consider what evidence is brought forward where a person is charged with an offence, as is the case at present. Police and prosecutors, who are well versed in the necessary evidence and thresholds, would also have to consider that the offence has been committed and that the test for public prosecution (including a public interest test) has been met.
Bar of NI	Notes that 3(1) states that the domestic abuse offence can be committed whether or not A's behaviour actually causes B to suffer harm of the sort referred to in section 1(2) and 3(2) which states that A's	In terms of the absence of a requirement to show harm what is important is that there is evidence of abusive behaviour. The provisions focus on the actions of the perpetrator and the intention to either cause harm or be reckless as to this. The purpose

	behaviour can be abusive of B by virtue of section 2(2)(c) whether or not A's behaviour actually has one or more of the relevant effects set out in section 2(3). It seems possible that the absence of a requirement to show harm to B could arise in cases where B is not the instigator of the complaint, where B is not in fact harmed and where B does not themselves consider the conduct abusive. The effects listed earlier at 2(3) may also arise in a non-abusive context. For example, this includes making B 'dependent on' A and could potentially include financial dependency. This could apply where one partner ceases paid employment to provide child care and, if combined with A then seeking to control the spending of B on clothes, that may fulfil "effects" (a) and (c), as drafted. Where B does not consider this abusive,	is to ensure that a case can be taken forward where an individual may have suffered considerable abuse over a period of time but due to the extent and nature of this it has become 'normalised' and/or as a result of this the person is unaware that they have been abused. An example of this would be the Hart brothers, who many in this field have heard speak, whose mother and sister where killed by their father. The Domestic Homicide Review in that case stated that they "had been suffering intense domestic abuse for many years and didn't know this … as there was no physical abuse". These behaviours are what we are dealing with in the bill. We have also liaised with prosecutorial colleagues in Scotland, whose legislation is framed in similar manner and which is often seen as the gold standard in this area, who have advised that they have not encountered practical difficulties with the operation of their offence. In terms of the query around a non-abusive context it must be remembered that there are a number of conditions that must be met for the offence to be committed, with checks and balances inherent in this. The behaviour must in the first instance occur on two or more occasions, be considered abusive (with a range of effects set out), would be considered by a reasonable person to be such, would be likely to cause the person to suffer physical or psychological harm and the offender intends to cause harm or is reckless as to this. All

	employing an objective test may cause difficulty. Notes the stipulation at 3(3) that 'nothing in this chapter prevents evidence from being led in proceedings for the domestic abuse offence about - (a) harm actually suffered by B as a result of A's behaviour, (b) effects which A's behaviour actually had on B'. **As stated above, it is important that such evidence remains relevant in the case and consideration should be given to whether the offence should in fact require evidence of harm to B**.	of these conditions have to occur for the offence to be carried out. If the behaviour is not considered abusive the offence cannot occur by virtue of a number of the conditions not being met. Police and prosecutors, who are well versed in the necessary evidence and thresholds, would also have to consider that the offence has been committed and that the test for public prosecution (including a public interest test) has been met.

CLAUSE 4 – MEANING OF BEHAVIOUR ETC.

EFM

This clause further explains what is meant by behaviour for the purposes of Chapter 1.
Subsection (2) provides that behaviour includes saying or otherwise communicating something as well as doing something (including an intentional failure to do, say, or otherwise communicate something). This could include, for example, a failure to pass on times and dates of appointments or social occasions, a failure to feed a family pet or a failure to speak to or communicate with an individual.
Subsection (3) clarifies that behaviour is directed at a person if it is directed in any way. This would include, for example, behaviour involving or towards property or behaviour that affects the ability to acquire, use, maintain money or other property or to obtain goods or services. This could relate to shared property or property belonging to parents. Property will also include pets or other animals (for example agricultural livestock) whether belonging to the victim or others.
The clause also provides that behaviour directed at a person includes behaviour carried out with or through a third party, for example by spying on or reporting on the activities of a partner/connected person. The third party's involvement could be unwitting or unwilling, as they may be entirely unaware that their behaviour was helping the accused to abuse their partner/connected person or they may have been coerced into participating in the abuse.

Organisation	Comments/Issues relating to Clause 4	Department of Justice Comments/ Position
Victim Support NI	Supports the definitions of behaviour outlined in the clause. Notes that this is a course of conduct offence requiring at least two occasions of such behaviour being carried out. **While this accurately reflects the pattern of behaviour that is trying to be captured and criminalised in this offence, training and resourcing will be necessary for such a course of conduct offence to be effectively policed and prosecuted.**	The Department recognises the importance of training and awareness raising. A multi-agency Task and Finish Group will consider how best this can be progressed. The police and PPS as key operational partners will be integral to this. Key statutory organisations are aware of the need to budget for the introduction of the offence. For many cases they will not involve new behaviours as such, rather incidents that are already being brought forward through the criminal justice system and have to be progressed through other less appropriate or potentially effective charges given the circumstances of the case.

	Additional resources should be provided to the PSNI to enable them to police this law effectively.	
La Dolce Vita	**Consider including in conduct relating to the person's ability to "DO NOT HARM:** **i) protect child from ongoing parental conflict and litigation e.g. "consistent criticising of other parent", denying of the parent's value to the child, informing child of court related matters, denigration of the other parent in the presence of child and others.** **ii) promote the stability, attachment and security of the child's relationship with parent/family members, the right of the child to have meaningful relationships with all.** **iii) false allegations, counter allegations that intentionally distract from the child's welfare.**	The focus of the Bill is on what is abusive behaviour and what it constitutes. The approach taken is therefore to reference types of abusive behaviours, as well as the effects of these, and not by reference to the form in which those behaviours can either manifest (such as abuse through parental alienation) or be avoided. It would not be appropriate for the Bill to state what positive steps should be taken, albeit that this is a laudable position.
NICCOSA	**Advises that Clause 4(b) and "Intentionally failing to do something" must be treated with caution and asks in what way should a person be compelled to do something - perhaps examples could be given in this definition.** The obvious one being failing to financially support B when it is clear that A had a duty to do so.	The clause is not about necessarily compelling a person to do something but rather that account can be taken, in determining whether there has been abusive behaviour, where a person deliberately does not do something which could be considered abusive. This could, for example, include deliberately withholding vital medication or intentionally failing to pass on times and dates of appointments.
Bar of NI	The adoption of either intention or recklessness as the mental element of an	The crux of the offence is that there has been abusive behaviour, whether or not there is further

	offence is common in criminal law. There is no reason why it should not be employed in respect of an offence of domestic abuse. However, **there is a risk that the problems already identified in respect of the *actus reus*, where the stated 'effects' of behaviour are very widely defined and may encompass behaviours that one would not expect to be criminalised, combined with both intention and recklessness as the *mens rea*, would not provide the legal certainty that is sought** Notes that liability can arise from an omission under clause 4(2)(b). It is possible to envisage situations where a failure, for example, to provide money to a dependent partner thus perhaps controlling their access to sufficient food, can easily be recognised as abusive behaviour causing harm. **It is harder to envisage a situation where criminal liability should properly be attributed for a failure to communicate something.** We note that the explanatory memorandum elaborates on this to mention examples such as a failure to pass on times and dates of appointments or social occasions, a failure to feed a family pet or a failure to speak to or communicate with an individual. However,	clarity provided in terms of what constitutes abusive behaviour and the stated effects. Even with, or in the absence of the latter, consideration has to be given to whether the behaviour is abusive. The behaviour must in the first instance be considered abusive (with a range of effects set out), would be considered by a reasonable person to be such, would be likely to cause the person to suffer physical or psychological harm and the offender intends to cause harm or is reckless as to this. All of these conditions have to occur for the offence to be carried out. It is considered that in the absence of these provisions there would be a lack of clarity and consistency across courts as to what potential effects would be. Clarity, in terms of the legislation setting out who is involved, the behaviour and effects that can occur is considered key for practitioners including police, PPS, the defence and courts. The behaviour will be looked at in the round, which could include a failure to communicate something and which is deemed to be abusive. In terms of limited examples in the explanatory memorandum of what may be considered reasonable this is a short document, intended to provide an overview; even a more substantive document cannot cover every single eventuality that may occur.

	we would **still be concerned that this definition is insufficiently clear, accessible and foreseeable. The risk of uncertainty is exacerbated when the mens rea for committing the offence by omission includes recklessness. We would reiterate that the defence of reasonableness must be available in respect of these situations given how broadly it has been defined.**	What will be important is that there is evidence of abusive behaviour. The provisions focus on the actions of the perpetrator and the intention to either cause harm or be reckless as to this. We have also liaised with prosecutorial colleagues in Scotland, whose legislation is framed in a similar manner and which is often seen as the gold standard in this area, who have advised that they have not encountered practical difficulties with the operation of their offence. Further safeguards also apply in terms of a defence where the behaviour could otherwise, dependant on the circumstances of the case, be considered reasonable.
Evangelical Alliance	Questions whether, notwithstanding genuine instances, **could this apply to unintended situations? Could it be applied retrospectively when a friendship ends between two teenagers? How could it be prevented from being conflated or confused with behaviour in an unstable romantic relationship which is immature, jealous, undesirable but again not necessarily criminal? Could this be applied to instances of bullying, which while not acceptable, may not be a criminal offence?**	The crux of the offence is that there has been criminally abusive behaviour which meets the conditions set out in the Bill. The offence operates on the basis of a number of checks and balances. The behaviour must in the first instance occur on two or more occasions, be considered abusive (with a range of effects set out), would be considered by a reasonable person to be such, would be likely to cause the person to suffer physical or psychological harm and the offender intends to cause harm or is reckless as to this. All of these conditions have to occur for the offence to be carried out. Police and prosecutors, who are well versed in the necessary evidence and thresholds, would also have to consider that the

		offence has been committed and that the test for public prosecution (including a public interest test) has been met. Further safeguards also apply in terms of a defence where the behaviour could otherwise, dependant on the circumstances of the case, be considered reasonable. The examples given would not in and of themselves be considered to meet the necessary criteria, in terms of, for example, a friendship ending or those in a relationship being immature.
	States that someone could potentially quite easily be 'reckless as to their intent' in their 'failure to do or say or communicate something' while at the same time seeking to cause no harm to the connected person or oblivious to any perceived harm caused. **Queries whether there is a clear enough boundary between these described patterns of behaviours and those which are undesirable and unkind but not unlawful.** **In addition, questions could this stop someone seeking help or change counselling around issues of jealously or anger or difficult aspects of their relationship if they suspected that they were likely to be reported to police by a third party counsellor?**	If a person has been reckless and failed to do something the conditions of the offence would only be met where the behaviour is deemed to be abusive. This would include for example where someone is unkind but not abusive. The checks, balances and safeguards in the offence would also apply as well as the defence available as appropriate. As with other areas these types of issues can be set out in the guidance associated with the offence. The key issue for the offence to apply will be whether there is deemed to be a course of abusive behaviour not whether actions are being taken to make someone a better person.

	Could this be applied to a mentor/mentee relationship, a youth leader and young person in a faith context where the mentor or youth leader is accused of a pattern of behaviour that was deemed reckless because of a failure to communicate particular things or in communicating certain teachings of that faith that are deemed to be 'harmful'?	The offence will only apply where two people are personally connected, broadly speaking that is are (or have been) partners, family members or in an intimate personal relationship i.e. in a domestic setting. Generally speaking this will not be the case in an organisational capacity where other safeguarding provisions should apply if necessary.

CLAUSE 5 – MEANING OF PERSONAL CONNECTION

EFM

This clause defines what two people are personally connected for the purposes of Chapter 1. Subsection (2) provides that two people are personally connected if they are, or have been, married or in a civil partnership or they live together (or have lived together) as if spouses of each other. Two people are also personally connected if they are or have been in an intimate personal relationship with each other or are family members. The term "intimate personal relationship" is intended to cover relationships between two individuals (including young/teenage and same-sex relationships), although the relationship need not be sexual or long-term.
Subsection (3) sets out that a family member covers a person's parent, grandparent, child, grandchild or sibling. A family member also covers the parent, grandparent, child, grandchild or sibling of the person that they are in a relevant relationship with. Subsection (4) defines that two people are in a relevant relationship if they are married or are in a civil partnership, or they live together as if spouses. Subsection (5) makes provision for the inclusion of half-blood relationships, relationships by affinity and stepchildren when considering family membership.

Organisation	Comments/Issues relating to Clause 5	Department of Justice Comments/ Position
Men's Advisory Project	States **clarity is required to ensure that 'affinity' covers all relationships where a person can have a position of influence over a person including situations where there is kinship or foster carers for example or where a family is not set up in a 'typical' way.**	In terms of the parental exclusion the provision relates to those that have responsibility for another which covers parental responsibility, a legal liability to maintain or having care of a young person.
Victim Support NI	Questions whether the Bill adequately covers all aspects of domestic abuse, particularly abuse from extended family members living under the same roof as if immediate family.	In considering the scope of family members the Department was keen to ensure that the range was comprehensive but not so broad, covering all possible family members, that it would negatively and adversely impact upon what society and the courts consider to be domestic abuse, in the context of committing an offence and the seriousness

		associated with this. For this reason it does not cover aunt, uncle or cousin. It is however more comprehensive than other regions in that family members and partners/former partners do not have to live together for the offence to occur, ensuring that for example the abuse of parents or grandparents who do not live with the person can be covered as well as abuse where individuals have separated, given that this is the point at which abuse can often escalate further. This also reflects the current police position whereby family members are deemed to include mother, father, brother, sister, son, daughter, grandparents, in-laws or stepfamily. Both police and PPS have indicated that they are content with the current scope of family member in the Bill.
NEXUS	**Recommends that there should be more clarity on whether "affinity" will cover relationships such as adoptive parent/child, foster parent/child, kinship carer/child relationships in cases where those carers are aunts/uncles as opposed to grandparents or other relatives who aren't listed but who nonetheless are in a position of influence over a person. This would be a particular concern in cases where extended family members live under the same roof as if immediate family.**	In terms of the parental exclusion it is considered that the examples provided would be covered by this as the provision relates to those that have responsibility for another which covers parental responsibility, a legal liability to maintain or having care of a young person. In considering the scope of family members the Department was keen to ensure that the range was comprehensive but not so broad, covering all possible family members, that it would negatively and adversely impact upon what society and the courts consider to be domestic abuse, in the context of committing an offence and the seriousness associated with this. For this reason it does not cover aunt, uncle or cousin. There could also be difficulties in terms of the permanency of any living

		arrangements, the transiency of contact and the potential to capture behaviour that would not otherwise be deemed to be domestic abuse. Account must also be taken that a number of organisations have expressed concern that the scope of family member is already too broad (and in a number of respects is already wider than that in other jurisdictions). Both police and PPS have indicated that they are content with the current scope of family member in the Bill.
Methodist Church in Ireland	Asks if the definition **makes sufficient provision within the terminology for children who are foster children or children who are in temporary care.** States that **consideration should also be given to including other family relatives with parental or guardian roles e.g. aunts, uncles etc.**	In terms of the parental exclusion it is considered that the examples provided would be covered by this as the provision relates to those that have responsibility for another which covers parental responsibility, a legal liability to maintain or having care of a young person. The child aggravator can apply whether or not there is a personal connection between the individuals. In considering the scope of family members the Department was keen to ensure that the range was comprehensive but not so broad, covering all possible family members, that it would negatively and adversely impact upon what society and the courts consider to be domestic abuse, in the context of committing an offence and the seriousness associated with this. For this reason it does not cover aunt, uncle or cousin. There could also be difficulties in terms of the permanency of any living

		arrangements, the transiency of contact and the potential to capture behaviour that would not otherwise be deemed to be domestic abuse. Account must also be taken that there has also been concern that the scope of family member is already too broad (and in a number of respects is already wider than that in other jurisdictions). This also reflects the current police position whereby family members are deemed to include mother, father, brother, sister, son, daughter, grandparents, in-laws or stepfamily. Both police and PPS have indicated that they are content with the current scope of family member in the Bill.
NICCY	**The application of the Bill's provisions to children under 18 years both as victims and as those engaging in harmful and abusive behaviour should be carefully considered. Where necessary, additional safeguards must be put in place to ensure that children at risk of harm are properly protected and also that children who display harmful behaviour receive appropriate and effective interventions.**	Where children are at a risk of harm this would be a child protection matter and dealt with appropriately as at present. In terms of those who display harmful behaviour their needs should be considered separately from the needs of the person being abused. There should be a co-ordinated approach by Health and Social Care Trusts, the police, Public Protection Arrangements NI, the Public Prosecution Service, victim support services and youth justice bodies. Schools and colleges may need to be involved as part of the co-ordinated response to provide education and awareness so that relevant professionals from this sector can understand the risks the young person may pose to other young people. This co-ordinated response should include working with the young person whose behaviour has been harmful and

		those working with the young person who has been harmed. Children and young people who abuse others should be held responsible for their abusive behaviour, while being identified and responded to in a way that meets their own needs as well as protecting others. Professionals should consider whether a young person who abuses others should be the subject of a Child Protection Case Conference if he or she is considered personally to be at risk of continuing significant harm.
Relate NI	Relate NI **believes that there is scope for further clarity on clause 5 and its application to fostering, adoption and kinship care arrangements as it is not at first clear whether the mention of 'affinity' in clause 5 is intended to cover such arrangements.** Personal connection does not appear to extend to individuals that are living together or had been living together not as spouses or situations where an individual is or has been a live in carer (in a part-time or full-time basis) within a private home.	In terms of the parental exclusion it is considered that the examples provided would be covered by this as the provision relates to those that have responsibility for another which covers parental responsibility, a legal liability to maintain or having care of a young person. Personal connection will cover individuals who are (or have been) married/civil partners (or living together as such), in an intimate personal relationship or are family members, whether or not they are living together. While we can appreciate concerns in relation to the treatment of individuals in care, it is not appropriate that private care scenarios are captured within the context of domestic abuse rather it is considered that this would be a safeguarding issue.
NIHRC	**NIHRC recommends that the definition of clause 5 is widened to**	While we can appreciate concerns in relation to the treatment of individuals in care, it is not appropriate

	include for example individuals living together without the need for any form of intimate relationship, live-in carers within a private home and guardians. **NIHRC advises that clause 5(3) be extended to unequivocally include family relationships such as an uncle, aunt, niece, nephew or cousin.**	that private care scenarios for example are captured within the context of domestic abuse rather it is considered that this would be a safeguarding issue. In considering the scope of family members the Department was keen to ensure that the range was comprehensive but not so broad, covering all possible family members, that it would negatively and adversely impact upon what society and the courts consider to be domestic abuse, in the context of committing an offence and the seriousness associated with this. For this reason it does not cover aunt, uncle or cousin. There could also be difficulties in terms of the permanency of any living arrangements, the transiency of contact and the potential to capture behaviour that would not otherwise be deemed to be domestic abuse. Account must also be taken that some concern has been expressed that the scope of family member is already too broad (and in a number of respects is already wider than that in other jurisdictions). The position in the Bill also reflects the current police position whereby family members are deemed to include mother, father, brother, sister, son, daughter, grandparents, in-laws or stepfamily. Both police and PPS have indicated that they are content with the current scope of family member in the Bill.
Bar of NI	The Bar notes that this clause brings a very wide range of personal connections	The scope of the domestic abuse offence in Scotland is limited to intimate partner relationships while locally it also cover family members as set out in the

	within the scope of the Bill which goes beyond partners or ex-partners. It appears that much of the Bill is based almost entirely on the Scottish model under the Domestic Abuse (Scotland) Act 2018 except for this clause which instead adopts section 76 of the Serious Crime Act 2015 in England and Wales and the associated list of relatives contained within section 63(1) of the Family Law Act 1996.	cross Departmental strategy. To do otherwise would be contrary to the position adopted in that Executive strategy. It also reflects the current police position whereby family members are deemed to include mother, father, brother, sister, son, daughter, grandparents, in-laws or stepfamily. We have not adopted section 76 of the Serious Crime Act 2015 which is both wider (in covering aunts, uncles, nieces, nephews and cousins, including where this is by marriage) and narrower than the local position (in that family members and former partners must live together). In considering the scope of family members the Department was keen to ensure that the range was comprehensive but not so broad, covering all possible family members, that it would negatively and adversely impact upon what society and the courts consider to be domestic abuse, in the context of committing an offence and the seriousness associated with this. For this reason it does not cover aunt, uncle, niece, nephew or cousin. It is however more comprehensive than other regions in that family members and partners/former partners do not have to live together for the offence to occur, ensuring that for example the abuse of parents or grandparents of parents or grandparents who do not live with the person can be covered as well as abuse where individuals have separated. It is considered important that relationships in these scenarios are not limited to living together, particularly given that

		abuse often escalates after separation, while we would have concerns at the possible extent of relationships to be covered if family members were extended further. The position in the Bill also reflects the current police position whereby family members are deemed to include mother, father, brother, sister, son, daughter, grandparents, in-laws or stepfamily. Both police and PPS have indicated that they are content with the current scope of family member in the Bill.
	In effect this Bill takes what constitutes abusive behaviour under the Scottish legislation and the low level of psychological harm required for an offence restricted only to partners and ex-partners and merges it with the wide ambit of the English legislation for a whole range of family members.	In terms of the absence of a requirement to show harm what is important is that there is evidence of abusive behaviour. The provisions focus on the actions of the perpetrator and the intention to either cause harm or be reckless as to this. The purpose is to ensure that a case can be taken forward where an individual may have suffered considerable abuse over a period of time but due to the extent and nature of this it has become 'normalised' and/or as a result of this the person is unaware that they have been abused. An example of this would be the Hart brothers, who many in this field have heard speak, whose mother and sister where killed by their father. The Domestic Homicide Review in that case stated that they "had been suffering intense domestic abuse for many years and didn't know this … as there was no physical abuse". These behaviours are what we are dealing with in the bill. In relation to the issue of harm more generally a number of conditions must be met for the offence to

		be committed, with checks and balances inherent in this. The behaviour must in the first instance occur on two or more occasions, be considered abusive (with a range of effects set out), would be considered by a reasonable person to be such, would be likely to cause the person to suffer physical or psychological harm and the offender intends to cause harm or is reckless as to this. All of these conditions have to occur for the offence to be carried out. In line with the above the offence is not intended to criminalise normal friction that may occur within a relationship or family. The above also sets out the Department's view in relation to family member.
	While the Bar can understand the rationale behind the inclusion of this on the basis of a desire to ultimately offer protection to a wide range of family members alongside the recognition that family dynamics are often diverse. **However, in terms of the practical operation of this clause there is a risk that a very broad spectrum of scenarios involving family disagreements could be unintentionally criminalised given that the Bill is not restricted to partners and ex-partners. The Bar queries whether the criminal law is the most appropriate way in which to deal with these extended family relationships and if this could be better addressed in other ways, such as through public education.**	

	Suggests consideration could be given to whether the offence should instead be defined more tightly to include partners, ex-partners and being aggravated where offending involves children (as per clauses 8 and 9).	

CLAUSE 6 – ESTABLISHING CONNECTION BY NOTICE		
EFM This clause provides a process for establishing, by means of a proposal made by the prosecution in proceedings for the offence, that two individuals are personally connected. The personal connection will be taken to be established unless challenged under the process set out for this.		
Organisation	**Comments/Issues relating to Clause 6**	**Department of Justice Comments/ Position**
NICCOSA	**Whilst it may be implicit that the same objections procedure as 6(4)(a) applies to 6(4)(b) it may be wise to re state the objection procedure.**	Legislatively this is considered unnecessary as the key aspect in clauses 6(4)(a) and (b) are that there has been an objection, not limited by the procedure through which the objection has been made.

CLAUSE 7 – HOW NOTICE IS TO BE SERVED		
EFM This clause provides for the service of notices where a relationship, that is two individuals being personally connected, is challenged under clause 6. It sets out the process to be applied and the meaning of key terms and their application.		
Organisation	**Comments/Issues relating to Clause 7**	**Department of Justice Comments/ Position**
Women's Aid Federation	Takes issue in relation to Clause 7(2) with **sending the notice by post to the person at the person's proper address. This has been a major issue for many years and is not secure and safe for the victim and survivor to know if the notice has been served. How is this proved as service?**	We understand that the concern around the service of notices relates to current provisions relating to protection orders etc. and notification of this to victims. The provisions in the Bill around the service of new notices relate to those circumstances where the personal relationship between two individuals is being challenged and for the service of notices, primarily between legal representatives. It is considered that this standard form of service should not prove problematic in this regard.
NICOSSA	In terms of "proper address" in Clause 7(2) **should caution be taken to ensure that this address is still the proper address of the defendant, considering that he or she may have recently left the premises following alleged domestic abuse incident?**	It is considered that this is a matter that would be dealt with at an operational level, in terms of identifying what is the 'proper address' of an individual.
NIWEP	**With regard to notice by electronic means suggests recording evidence of delivery and/or requiring confirmation of receipt to reduce administrative burden**	This could be provided for operationally, with legislative provision considered unnecessary.

	and delay due to non-delivery or contested delivery.	

CLAUSE 8 – AGGRAVATION WHERE VICTIM IS UNDER 18

EFM

This clause provides that an allegation may be specified alongside the domestic abuse offence that it is aggravated because the accused's partner/connected person was under 18 at the time of any of the behaviour that constituted the domestic abuse offence. This could enable sentencing to be increased up to the maximum available.
Subsection (2) and (3) sets out that, where the charge together with the aggravation is proved, the court must state on conviction that it is aggravated and take the aggravation into account when determining the sentence, as a factor that increases the seriousness of the offence. The court is also required to state how the aggravation has affected the sentence and in recording the conviction show it as aggravated by reason of the partner/connected person being under 18.
Subsection (4) makes it clear that if the aggravation is not proved, but the charge is proved, conviction is as if the aggravation were not referred to alongside the charge.

Organisation	Comments/Issues relating to Clause 8	Department of Justice Comments/ Position
NSPCC	Welcomes the policy intention behind clauses 8 and 9, in attempting to recognise the impact that domestic abuse has on children. **However, believes amendments are required and suggests that clause 8 – aggravation where victim is under 18 – should be amended in light of our comments that the offence should only apply where A and B are over 16. While this clause goes some way to reflect that children are impacted by domestic abuse we suggest the incorporation of child C into the statutory definition of domestic abuse would be a much clearer and effective solution.**	The Westminster Domestic Abuse Bill provides that their definition of domestic abuse applies to those aged 16 and over. The offence in England and Wales, which is entirely separate to the definition of domestic abuse, is provided for through Section 76 of the Serious Crime Act 2015. This is unaffected by the provisions in the Domestic Abuse Bill. Similar to the situation locally that offence applies to offenders over the age of criminal responsibility, and to victims under the age of 16 (except where parental responsibility applies). While appreciating the concerns expressed it is important to ensure that the offence is available in cases of domestic abuse against parents, vulnerable elderly grandparents as well as ongoing

	Welcomes the recognition of the particular impact on victims who are under 18.	and persistent abuse in teenage relationships. As with all other offences, in deciding whether to charge a young person, consideration will be given to the circumstances of the case, whether the test for public prosecution (including a public interest test) is met and what alternative disposals may be available. Youth Justice Agency staff are trained to recognise and respond to issues of domestic abuse in all its forms, whether a child is a victim or perpetrator. They are required to negotiate the procedural and process requirements of both the justice and safeguarding systems as they impact on children and adults, whilst supporting service users to engage with a range of support requirements and safety plans. Specialised interventions are delivered as part of community or court-ordered disposals, often in collaboration with other statutory and voluntary organisations. The experience in other jurisdictions are that the number of young people charged with an offence has been relatively low. We understand that in Scotland, for example, around 1.5% of those reported and prosecuted were under the age of 18 (around 15 - 20 individuals), while in England and Wales we understand that only two individuals under the age of 18 have been convicted. Children and young people are covered by the offence in two ways, where they are in a

		relationship or a family member (except where parental responsibility applies).
Barnardo's	**Highlight that it is difficult for many young people to recognise and accept they have experienced domestic abuse and that information exchanged through sexting can often be used in threats to enforce control.**	The issue of prevention and early intervention is a key strand under the seven year domestic and sexual violence and abuse strategy. A number of actions under the current year five action plan relate to supporting teaching about healthy relationships, supporting an effective preventative curriculum and resources as well as raising awareness.
Women's Aid Federation	Notes that this aggravates the domestic abuse offence when the victim is under 18 **but does not cover a situation where the victim is the child of the perpetrator or the child is someone the perpetrator has parental responsibility for and this is a major concern as coercive and controlling behaviour will not be criminalised in this situation.**	The Department gave careful consideration to the scope of the domestic abuse offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member (except where parental responsibility applies, in order to prevent criminalisation of this as a domestic abuse matter) and that aggravation related to a child could be reflected while preventing criminalisation of parental responsibility. Having considered the matter further, and taking account of the concerns expressed, the Department is having discussions with colleagues in the Department of Health around a possible amendment to child protection provisions (contained in health legislation but amendment of which could be brought forward through the Domestic Abuse Bill subject to agreement) to make it explicit that where a child is ill treated, that this would also include non-physical abuse. Such provision would make clear that it would be an

		offence whether the suffering or injury caused to a child was physical or psychological in nature, for example isolation, humiliation or bullying. No other jurisdiction locally provides for criminalisation in relation to parental responsibility under domestic abuse legislation, while our provisions in relation to the offence and children go further than other jurisdictions already provide for. In England and Wales the coercive control offence is available for victims under the age of 16 (except where parental responsibility applies), while in Scotland and the Republic of Ireland the offence does not apply to family members. Where there are more general issues regarding safeguarding and child protection these would be addressed through other means, offences and sanctions.
	Women's Aid would like to see this extended to a full review of the family courts including a review of the duty to protect and how written agreements ae being used.	The Department (along with other departments with responsibilities in relation to family justice and the judiciary) is still considering the many and wide-ranging recommendations of the Gillen Review of Family Justice. The Review specifically considered the issue of contact orders and child arrangements in the context of domestic abuse and recommended the introduction of a judicial Practice Direction in Northern Ireland (similar to one in England and Wales), which is for the judiciary to consider. The Department is considering whether any of the legislative measures recommended by the Expert

		Panel for England & Wales (relating to matters for which the Department has policy responsibility) might usefully be adopted in this jurisdiction.
	Suggests that other vulnerabilities that should be considered as aggravating factors are disabled women, mental illness, women with no recourse, BME women to reflect the inequality that underpins domestic violence and abuse.	In determining the sentencing in a case it will be for a judge to consider whether there are any general issues, such as vulnerability of the victim that would impact on the sentence given. Some of these issues may also be relevant to the review of hate crime legislation that is underway.
Women's Policy Group	Welcomes the inclusion of children as an aggravating factor and states that for far too long children have been considered as passive witnesses to domestic abuse - this has never been the case - children are victims of domestic abuse too and should be valued as such. **WPG would like to see this extend to a full review of Family Courts to assess how children are protected and safeguarded across both legal systems.**	The Department (along with other departments with responsibilities in relation to family justice and the judiciary) is still considering the many and wide-ranging recommendations of the Gillen Review of Family Justice. The Review specifically considered the issue of contact orders and child arrangements in the context of domestic abuse and recommended the introduction of a judicial Practice Direction in Northern Ireland (similar to one in England and Wales), which is for the judiciary to consider. The Department is considering whether any of the legislative measures recommended by the Expert Panel for England & Wales (relating to matters for which the Department has policy responsibility) might usefully be adopted in this jurisdiction.
	WPG also calls for other status groups or circumstances to be considered as aggravating factors including	In determining the sentencing in a case it will be for a judge to consider whether there are any general issues, such as vulnerability of the victim, that would impact on the sentence given. A sentencing

	disability, BME women, LGBT+ people, women with NRPF.	guidelines paper on domestic violence and abuse, by His Honour Judge Burgess, is currently available on the 'Sentencing Guidelines for Northern Ireland' section of the Judiciary NI website. In addition, judges are able to draw on sentencing guidelines laid down in previous cases by the Court of Appeal, and can take into account guidelines from the English Sentencing Council (which includes the overarching guidelines on domestic violence). The judiciary are highly trained and experienced independent professionals whose job is to balance all the relevant factors to arrive at an appropriate sentence.
Victim Support NI	Is largely supportive of this clause but states that **consideration should be given to how the law might be applied in cases where the perpetrator is also a child and determine how best to safeguard the law against unintended consequences e.g. the law in its current form may result in harsher sentencing in a case where both perpetrator and victim are 17 years old and in a relationship or where a victim is 17 and the perpetrator is 18 and there is no evidence of that abuser taking advantage of a victim's young age in a predatory and opportunistic way.**	While appreciating the concerns expressed it is important to ensure that the offence is available in cases of domestic abuse against parents, vulnerable elderly grandparents as well as ongoing and persistent abuse in teenage relationships. As with all other offences, in deciding whether to charge a young person, consideration will be given to the circumstances of the case, whether the test for public prosecution (including a public interest test) is met and what alternative disposals may be available. Youth Justice Agency staff are trained to recognise and respond to issues of domestic abuse in all its forms, whether a child is a victim or perpetrator. They are required to negotiate the procedural and process requirements of both the justice and safeguarding systems as they impact on children and adults, whilst supporting service users

		to engage with a range of support requirements and safety plans. Specialised interventions are delivered as part of community or court-ordered disposals, often in collaboration with other statutory and voluntary organisations.
	Victim Support recommends that consideration is given to whether an amendment is necessary to ensure that young perpetrators are not disproportionately punished by this provision than older offenders due to the increased likelihood of them being in a relationship with someone under 18 or whether it can be addressed in the Bill Explanatory Memorandum or via sentencing guidance.	The experience in other jurisdictions are that the number of young people charged with an offence has been relatively low. We understand that in Scotland, for example, around 1.5% of those reported and prosecuted were under the age of 18 (around 15 - 20 individuals), while in England and Wales we understand that only two individuals under the age of 18 have been convicted. In determining the sentencing in a case it will be for a judge to determine the appropriate sentence, having taken account of the particular circumstances of the case and consider whether there are any general issues, such as vulnerability of the victim, that would impact on the sentence given. A sentencing guidelines paper on domestic violence and abuse, by His Honour Judge Burgess, is currently available on the 'Sentencing Guidelines for Northern Ireland' section of the Judiciary NI website. In addition, judges are able to draw on sentencing guidelines laid down in previous cases by the Court of Appeal, and can take into account guidelines from the English Sentencing Council (which includes the overarching guidelines on domestic violence). The judiciary are highly trained and experienced independent professionals whose

		job is to balance all the relevant factors to arrive at an appropriate sentence. The issue of sentencing guidelines will be considered as part of the work being undertaken on operationalisation of the Bill and discussions are being held with the Judicial Studies Board in relation to this issue.
Men's Advisory Project	Supports this clause but also **requests further clarity regarding situations where there are only a few months of age difference to ensure that there is not a discrepancy in how perpetrators are prosecuted.**	As with all other offences, in deciding whether to charge a young person, consideration will be given to the circumstances of the case, whether the test for public prosecution (including a public interest test) is met and what alternative disposals may be available. Youth Justice Agency staff are trained to recognise and respond to issues of domestic abuse in all its forms, whether a child is a victim or perpetrator. They are required to negotiate the procedural and process requirements of both the justice and safeguarding systems as they impact on children and adults, whilst supporting service users to engage with a range of support requirements and safety plans. Specialised interventions are delivered as part of community or court-ordered disposals, often in collaboration with other statutory and voluntary organisations. The experience in other jurisdictions are that the number of young people charged with an offence has been relatively low. We understand that in Scotland, for example, around 1.5% of those

		reported and prosecuted were under the age of 18 (around 15 - 20 individuals), while in England and Wales we understand that only two individuals under the age of 18 have been convicted. In terms of sentence it is the judge alone who decides on the individual sentence given. They are guided by a number of considerations: • the maximum sentence they can give; • whether the defendant pleaded guilty or not; • the level of sentences in similar cases in the past, that is 'case law'; • any mitigating or aggravating factors; • the circumstances set out in background reports; • any Victim Impact Report, which is prepared by an expert, for example a psychologist; • any Victim Impact Statement made by the victim of the crime The sentence granted will ultimately depend on the nature of the offence and the particular circumstances of the case.
NIWEP	Agrees with **concerns that care must be taken to ensure young people are not punished unduly harshly under this clause and consideration must be given to whether and how the aggravation is applied in circumstances such as someone aged 18 in a relationship with someone aged 17.**	As with all other offences, in deciding whether to charge a young person, consideration will be given to the circumstances of the case, whether the test for public prosecution (including a public interest test) is met and what alternative disposals may be available. Youth Justice Agency staff are trained to recognise and respond to issues of domestic abuse in all its forms, whether a child is a victim or

		perpetrator. They are required to negotiate the procedural and process requirements of both the justice and safeguarding systems as they impact on children and adults, whilst supporting service users to engage with a range of support requirements and safety plans. Specialised interventions are delivered as part of community or court-ordered disposals, often in collaboration with other statutory and voluntary organisations. The experience in other jurisdictions are that the number of young people charged with an offence has been relatively low. We understand that in Scotland, for example, around 1.5% of those reported and prosecuted were under the age of 18 (around 15 - 20 individuals), while in England and Wales we understand that only two individuals under the age of 18 have been convicted. In terms of sentence given and the extent of any aggravation this will be decided by the judge. The sentence granted will ultimately depend on the nature of the offence and the particular circumstances of the case.
NEXUS	While largely supportive of this clause, **Nexus asks if consideration has been given as to how the law would be applied in cases where the perpetrator is also a child.**	See above.
COPNI	Notes that the protection of a vulnerable older person falls outside the stated aggravating factors contained in the Bill:	In determining the sentencing in a case, where a statutory aggravator does not apply, it will be for a judge to consider whether there are any issues,

	where 'the victim is under 18' (8); and where a 'relevant child is involved' (9). **Recognising these limitations is not a criticism of the progressive intent behind the Domestic Abuse Bill or indeed the Bill itself, but rather is an attempt to highlight the work to be done to protect the vulnerable in our society.**	such as vulnerability of the victim, that would impact on the sentence given. In line with sentencing guidance, a judge is generally required to treat the fact that the victim was an older, or an otherwise vulnerable person, as an aggravating factor. Guidance issued by the Northern Ireland Court of Appeal advises sentencers that the deliberate targeting of vulnerable victims is considered an aggravating factor, and that the starting point for the sentence calculation should increase accordingly depending on the age, vulnerability, or infirmity of the victim.
NICCY	NICCY notes that the Bill recognises that children and young people in relationships can be directly affected by domestic violence and abuse through the inclusion of an aggravator to the offence where a victim, as person B, is under 18 years and acknowledges the intention of the provision to reflect the particularly serious nature of such offences when committed against children by enabling sentencing to be increased to the maximum available in such cases. Notes that the Bill is intended to cover teenage and young relationships and draws attention to the potential application of the child aggravator clause to children and young people in young relationships	

	who may be engaged in harmful and abusive behaviour. **NICCY is clear that any such abusive and harmful behaviour is unacceptable and necessitates a swift response with the aim of safeguarding and protecting child victims and ensuring they have access to specialist therapeutic support and help.** **However, such interventions should also aim to deliver effective therapeutic and rehabilitative interventions for children engaged in such abusive behaviour and seek to divert them away from the criminal justice system.**	The Victim Charter provides that young people are entitled to: • have access to a victim support service provider and be provided with a Young Witness Pack by that service provider; • have the Victim and Witness Care Unit take appropriate steps to help them get the support they need as a result of the needs assessment process; and • speak to someone specially trained to listen to them and help then get over the crime, at any time during the investigation (and trial). This could be therapy or counselling. In terms of those who display harmful behaviour their needs should be considered separately from the needs of the person being abused. There should be a co-ordinated approach by Health and Social Care Trusts, the police, Public Protection Arrangements NI, the Public Prosecution Service, victim support services and youth justice bodies. Schools and colleges may need to be involved as part of the co-ordinated response to provide education and awareness so that relevant professionals from this sector can understand the risks the young person may pose to other young people. This co-ordinated response should include

		working with the young person whose behaviour has been harmful and those working with the young person who has been harmed. Children and young people who abuse others should be held responsible for their abusive behaviour while being identified and responded to in a way that meets their own needs as well as protecting others. Professionals should consider whether a young person who abuses others should be the subject of a Child Protection Case Conference if he or she is considered personally to be at risk of continuing significant harm.
	NICCY highlights that the Bill in these provisions is broader than that already in place or proposed in other jurisdictions and agrees with other organisations that the outworking of the Bill's provisions should not result in the aggravation clause leading to children in young relationships entering the criminal justice system or receiving disproportionately harsher sentences than adult perpetrators who may engage in repeat patterns of intentionally targeting and exploiting children for domestic abuse or be long standing perpetrators of such abuse in their intimate relationships with adults. **NICCY states that while the provisions of the Bill should protect child victims they must not inappropriately**	The coercive control offence in England and Wales, under Section 76 of the Serious Crime Act 2015, provides that (similar to the situation locally) the offence applies to those offenders over the age of criminal responsibility, and victims under the age of 16 (except where parental responsibility applies). While appreciating the concerns expressed it is important to ensure that the offence is available in cases of domestic abuse against parents, vulnerable elderly grandparents as well as ongoing and persistent abuse in teenage relationships. As with all other offences, in deciding whether to charge a young person, consideration will be given to the circumstances of the case, whether the test for public prosecution (including a public interest test) is met and what alternative disposals may be available.

	criminalise or disproportionately impact on children engaged in harmful or abusive behaviour.	Youth Justice Agency staff are trained to recognise and respond to issues of domestic abuse in all its forms, whether a child is a victim or perpetrator. They are required to negotiate the procedural and process requirements of both the justice and safeguarding systems as they impact on children and adults, whilst supporting service users to engage with a range of support requirements and safety plans. Specialised interventions are delivered as part of community or court-ordered disposals, often in collaboration with other statutory and voluntary organisations. The experience in other jurisdictions are that the number of young people charged with an offence has been relatively low. We understand that in Scotland, for example, around 1.5% of those reported and prosecuted were under the age of 18 (around 15 - 20 individuals), while in England and Wales we understand that only two individuals under the age of 18 have been convicted.
NIHRC	The NIHRC welcomes the purposes of clauses 8 and 9 as they are reflective of the specific impact that domestic abuse can have on children and deters the perpetrator from using children for the purposes of abusing the adult victim. **The Commission recommends that safeguards are introduced to ensure clauses 8 and 9 are implemented in**	

	such a way that the best interests of the child are a primary consideration. This includes only requiring that evidence is obtained directly from the child victim or relevant child when necessary and that it is obtained in a child-friendly manner. It includes the child victim or relevant child only providing evidence directly to the court when it is necessary, that it is set up in an age-appropriate manner and that consideration is given to alternatives such as live links where appropriate. It also includes providing age-appropriate psycho-social counselling to the child victim or relevant child before, during and after the trial.	The involvement of a child in terms of the giving of evidence should only be utilised where considered necessary. The Victim Charter (for which the police and Public Prosecution Service are service providers) states that in providing services under the Charter, where the victim is a child or young person, the best interests of the child or young person will be a primary consideration and will be assessed on an individual basis. It also states that a child sensitive approach will be adopted, taking due account of their age, maturity, views, needs and concerns. The Charter states that a child or young person under 18 will be presumed to have specific protection needs and should receive the highest level of support and protection as they move through the criminal justice system. Under the Charter young people are entitled to • automatically be considered as eligible for special measures by the police and Victim and Witness Care Unit as part of their needs assessment; • have their statement audio-video recorded by the police, where this is appropriate; • have access to a victim support service provider and be provided with a Young Witness Pack by that service provider;

		• practice using the live link TV facility before the trial, when they are to use this to give evidence, where possible; • have the Victim and Witness Care Unit take appropriate steps to help them get the support they need as a result of the needs assessment process; and • speak to someone specially trained to listen to them and help then get over the crime, at any time during the investigation (and trial). This could be therapy or counselling. When giving evidence a person under 18 is automatically eligible for special measures (including video recorded police statement and giving evidence by live link. This would also include pre-recorded cross examination ahead of trial when introduced (likely for sexual offences for under 13s in the first instance)).
Bar of NI	The Bar agrees that the offence should be aggravated by reason of the accused's partner or connected person being under 18 at the time of any of the behaviour that constituted the domestic abuse offence. **However, in terms of clause 8(3), considers that it is sufficient for the court to state on conviction that the offence was aggravated, record the conviction in a way that shows that the offence was aggravated and take the aggravation into account in**	The Department considered carefully the obligation that should be placed on the judiciary, taking into account the independence of the judiciary and the need not to interfere with this. It is for this reason that the provisions require the judiciary to simply explain how the fact that the offence is so aggravated affected the sentence imposed. This

	determining the appropriate sentence under 8(3)(a), (b) and (c). Is of the view that the requirement under 8(3)(d) for the court to indicate how the offence affected the sentence is not necessary as it could disturb the judiciary's carefully weighted assessment as to the starting point of a sentence in cases involving domestic abuse as an aggravating factor.	will not affect judicial discretion and it will be for the judiciary to determine what is appropriate to be provided, as well as the sentence awarded, given the particular circumstances of the case.

CLAUSE 9 – AGGRAVATION WHERE RELEVANT CHILD IS INVOLVED

EFM

This clause provides that an allegation may be specified alongside the domestic abuse offence that it is aggravated, through involving a child (under 18) who is not the accused or the partner/connected person. This includes the child of either person.

Subsection (2)(a)(i) provides that the aggravation applies where it is shown that, at any time in commissioning the offence, the accused directed behaviour at a child. This could include the accused threatening violence towards a child to control or frighten the partner/connected person or being abusive towards the child.

Subsection (2)(a)(ii) provides that the aggravation applies where it is shown that, in committing the offence, the accused made use of the child in directing behaviour at their partner/connected person. This could apply where the accused encourages or directs a child to spy on or report on the day-to-day activities of a partner/connected person. The involvement of the child could be unwittingly or unwillingly.

The aggravation would apply to the involvement of any child in the domestic abuse offence (apart from when the child is the partner/connected person, which would be caught by clause 8). This would include, for example, the accused or victim's own child, another child living in or visiting the household, or a neighbour's child.

Subsection (2)(b) provides that the aggravation applies where a child sees, hears or is present during a single incident of the course of behaviour. This could, for example, be a verbal abuse incident or a physical assault and the child need not necessarily be in the same room as the accused and partner/connected person.

Subsections (3) and (4) sets out that, where the charge together with the aggravation is proved, the court must state on conviction that it is aggravated and take the aggravation into account when determining the sentence, as a factor which increases the seriousness of the offence. The court is also required to state how it has affected the sentence and in recording the conviction shows it as aggravated by reason of involving a person being under 18 (who is not the accused or the partner/connected person).

Subsection (5) makes it clear that if the aggravation is not proved, but the charge is proved, conviction is as if the aggravation were not referred to alongside the charge.

Organisation	**Comments/Issues relating to Clause 9**	**Department of Justice Comments/ Position**
Women's Aid Federation	**Welcomes the aggravator but is of the view that it does not go enough in addressing the issue**. **Has concerns that stating in 9(2)(b) that *'the child saw or heard, or was present during***	The Department gave careful consideration to the scope of the domestic abuse offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member (except where parental

	….' does not adequately address the issue or recognise the persistent, on-going nature of the impact of abuse on a child living in a home with domestic violence and abuse and may have unforeseen consequences in the application of other criminal justice legislation and protection from domestic abuse towards children. **Women's Aid calls for children to be treated as victims in their own right and not as associated persons. States that there also needs to be assurances of a child centred approach within this clause and a focus on appropriate safeguarding mechanisms.** If the perpetrator engages in a course of behaviour that is coercive and controlling of the child in an attempt to get at the child's parent, then the parent is recorded as the victim and any prosecution for that behaviour directed at the child will be dependent on the parent making a complaint to police and therefore the child cannot do this in their own right**. Women's Aid calls for full recognition of children and young people as equal victims of domestic violence and wants to see a collective strategic response to meet their needs**	responsibility applies, in order to prevent criminalisation of this as a domestic abuse matter) and that aggravation related to a child could be reflected while preventing criminalisation of parental responsibility. Having considered the matter further, and taking account of the concerns expressed, the Department is having discussions with colleagues in the Department of Health around a possible amendment to child protection provisions (contained in health legislation but amendment of which could be brought forward through the Domestic Abuse Bill subject to agreement) to make it explicit that where a child is ill treated, that this would also include non-physical abuse. Such provision would make clear that it would be an offence whether the suffering or injury caused to a child was physical or psychological in nature, for example isolation, humiliation or bullying. No other jurisdiction locally provides for criminalisation in relation to parental responsibility under domestic abuse legislation, while our provisions in relation to the offence and children go further than other jurisdictions already provide for. In England and Wales the coercive control offence is available for victims under the age of 16 (except where parental responsibility applies), while in Scotland and the Republic of Ireland the offence does not apply to family members.

	at individual, community, organisation and government levels. **Believes that the legislation should provide not only for situations of direct abuse of a child but also the impact on children who see, hear or are otherwise exposed to domestic abuse perpetrated by one adult against another**.	Where there are more general issues regarding safeguarding and child protection these would be addressed through other means, offences and sanctions.
Action for Children	Agrees with Women's Aid that "the experience of these children and young people are often overlooked."	The Department gave careful consideration to the scope of the domestic abuse offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member (except where parental responsibility applies, in order to prevent criminalisation of this as a domestic abuse matter) and that aggravation related to a child could be reflected while preventing criminalisation of parental responsibility. Having considered the matter further, and taking account of the concerns expressed, the Department is having discussions with colleagues in the Department of Health around a possible amendment to child protection provisions (contained in health legislation but amendment of which could be brought forward through the Domestic Abuse Bill subject to agreement) to make it explicit that where a child is ill treated, that this would also include non-physical abuse. Such provision would make clear that it would be an offence whether the suffering or injury caused to a

		child was physical or psychological in nature, for example isolation, humiliation or bullying. No other jurisdiction locally provides for criminalisation in relation to parental responsibility under domestic abuse legislation, while our provisions in relation to the offence and children go further than other jurisdictions already provide for. In England and Wales the coercive control offence is available for victims under the age of 16 (except where parental responsibility applies), while in Scotland and the Republic of Ireland the offence does not apply to family members.
Men's Advisory Project	Supports an aggravation where a child becomes involved but is not the primary intended recipient of the abuse. **States that recognition must be made of the use of a child to abuse by means of the erosion of their respect and love of their parent.**	Under the offence a person would be guilty of an offence where the necessary conditions are met and the person uses another person, including a child, to abuse someone that they are connected to. In addition, the domestic abuse offence could also be aggravated by virtue of this.
Barnardo's	While welcoming the Bill's recognition of the impact of domestic abuse on children, in particular through the aggravation outlined in this clause, **Barnardo's highlights the importance of the Bill reflecting that a child can be aware of and impacted by domestic abuse in the home even if they do not see or hear the moment in which it occurs and urges that the current reference in subsection (2)(b) is expanded to recognise that children do not need to**	Under the current provisions of the Bill the domestic abuse offence would be aggravated where a child is present recognising the impact that domestic abuse can have. It is considered that this would not necessarily be restricted to the child having to directly witness the abuse, given that the Bill refers to sees, hears or was present. The Bill also makes provision that enables a sentence to be aggravated where the child is not the direct victim but has perhaps been used to

	witness the abuse to be affected, and are impacted by the abuse whether or not they are the intended victim.	further abuse another person whether knowingly or not. While the Department appreciates the concerns about the wider impact of domestic abuse, even where a child is not present, it is not considered feasible to extend the offence to cover wider domestic environmental impact before or after an incident has occurred. Any such change could also be subject to successful legal challenge. It is hoped that through the introduction of the domestic offence that longer term incidents of domestic abuse will be reduced.
Children's Law Centre	**CLC also recommends that the aggravator where a child sees, hears or is present during an incident of abuse is extended to include the ability for the courts to impose an aggravated sentence even if a child does not directly witness the single incident of abuse of which the perpetrator is being charged with** noting that children are aware of, and affected by, domestic abuse in the home even if they are not present at the time of the incident. **CLC recommends the need for an automatic consideration regarding**	Under the current provisions of the Bill the domestic abuse offence would occur where the conditions of the offence are met and a child is present. It is considered that this would not be necessarily restricted to the child having to have directly witness the abuse, given that the Bill refers to sees, hears or was present. While the Department appreciates the concerns about the wider impact of domestic abuse, even where a child is not present, it is not considered feasible to extend the offence to cover wider domestic environmental impact before or after an incident has occurred. Any such change could also be subject to successful legal challenge. It is hoped that through the introduction of the domestic offence that longer term incidents of domestic abuse will be reduced. The issue of contact with a child would be considered by a court if there was an application for

	contact between the child and the perpetrator, particularly where the perpetrator is the parent with the consideration based on the best interests of the child.	contact (or other family proceedings) involving the relevant parties before it. The Children (Northern Ireland) Order 1995 makes the welfare of the child the court's paramount consideration in determining the issue of contact.
La Dolce Vita	**Requests that consideration is given to including:** **i) parent, grandparent, caregiver, inability to respect the integrity of the child.** **e.g. permission to show love to other parent, communicate with other parent.** **ii) interference with parental time: access resistance, breaching of contact arrangements and court orders.** **iv) undermining of the child' ability to focus on being a child e.g. ingrained conflict patterns identified in child.** **v) Indirect and direct threats of harm "you will not see your child again if you leave me".** **vi) Causing of financial hardship**	The approach taken in the Bill is to reference types of abusive behaviours, such as threatening behaviour, behaviour directed at someone (including a child) that can have a range of effects including dependency, isolation, controlling, monitoring activities. To incorporate the suggested detailed approach would not align with this. While a number of these aspects may be covered by the offence, it will be for the court to consider, depending on the individual circumstances of the case, what constitutes abusive behaviour. As part of the operationalisation of the offence, and the development of the statutory guidance (which will be published), consideration will be given to its content and will include examples of abusive behaviour. This will be considered by a multi-agency Task and Finish Group involving our usual key stakeholders, as is the case with all major policies taken forward by the Department in this area, through which a range of views can be reflected.
NICCY	NICCY welcomes the intent of this aggravator clause and notes that it is intended to include children whose parent or carer is subject to abuse as well as other children who may, for example, be	

	staying in the household where abuse occurs or be the children of neighbours who are used by the perpetrator to facilitate abuse through, for instance, the passing on or reporting of information. **Highlights that children are adversely affected by domestic violence beyond occasions where they only see, hear and consideration should be given to how this can be better reflected in the legislation. NICCY notes that the equivalent Scottish legislation provides that children do not have to be aware of or understand the nature of the abusive behaviour for the provision to be engaged and that this can more effectively capture the impact on children who may, for instance, reside in a different household from that in which the violence occurs.**	In terms of a provision that the domestic abuse offence would be aggravated where a reasonable person considers that the behaviour would be likely to adversely affect a child, and the child lives with either the victim or offender, it is considered that these cases will typically be captured by the see, hear or is present aggravator, given the condition that the child must live with one or both of the individuals. The Department would have concerns that such a provision could in practice be considered to apply to all incidents of abusive behaviour regardless of their nature, with anything being deemed to have an adverse impact, simply because those involved are part of a family unit. This could raise concerns in the context of the basis upon which increased sentencing is applied and also serve to weaken the impact of the child aggravators. More generally it should be noted that in sentencing an individual the court must determine the appropriate sentence taking account of all the particularly circumstances of the case. On this basis the Department is not minded to make provision for this. ~~It is considered that the offence locally, in relation to child aggravation, is wider than the Scottish offence~~

	Also seeks assurances that, where a child is affected by domestic violence, formal safeguarding procedures as well as the protections of criminal law are engaged.	~~in that there is no requirement for a reasonable person to consider that the behaviour would adversely impact on a child or that the child has to live with the victim or offender. The requirement in the Bill is simply that the child sees, hears or is present. Given this, there is no associated condition that a child does not have to be aware of the abusive behaviour.~~ The Department is also of the view that the Scottish provisions do not extend to abuse that occurs outside the home, that is where a chid lives in another household from that in which the violence occurs, rather it is about the extent to which evidence of the impact on the child is needed. While the Department appreciates the concerns about the wider impact of domestic abuse, even where a child is not present, it is not considered feasible to extend the offence to cover wider domestic environmental impact before or after an incident has occurred. Any such change could also be subject to successful legal challenge. It is hoped that through the introduction of the domestic offence that longer term incidents of domestic abuse will be reduced. In regards to the issue of safeguarding the introduction of the domestic abuse offence will not

		adversely impact on formal safeguarding and child protection procedures that are already in place.
NSPCC	NSPCC welcomes clause 9 – aggravation where relevant child is involved – and considers it a welcome step forward in considering the impact of domestic abuse on children. **However, as previously set out, beyond the aggravator it would welcome further consideration of how children's experiences can be directly included within the statutory definition of the offence itself.**	The Department gave careful consideration to the scope of the domestic abuse offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member (except where parental responsibility applies, in order to prevent criminalisation of this as a domestic abuse matter) and that aggravation related to a child could be reflected while preventing criminalisation of parental responsibility. Having considered the matter further, and taking account of the concerns expressed, the Department is having discussions with colleagues in the Department of Health around a possible amendment to child protection provisions (contained in health legislation but amendment of which could be brought forward through the Domestic Abuse Bill subject to agreement) to make it explicit that where a child is ill treated, that this would also include non-physical abuse. Such provision would make clear that it would be an offence whether the suffering or injury caused to a child was physical or psychological in nature, for example isolation, humiliation or bullying. No other jurisdiction locally provides for criminalisation in relation to parental responsibility under domestic abuse legislation and our provisions in relation to the offence and children go

	NSPCC also notes the Scottish legislation on which clause 9 is based includes a 'reasonable person' test – that the aggravation is proven a reasonable person would consider the course of behaviour likely to adversely affect a child. This test was included in the Scottish legislation in large part to avoid children having to give evidence about their experiences in court. Following that same reasoning, NSPCC recommends that a 'reasonable person' test is also added to this clause.	further than other jurisdictions already provide for. In England and Wales the coercive control offence is available for victims under the age of 16, except where parental responsibility applies, while in Scotland and the Republic of Ireland the offence does not apply to family members. Where there are issues regarding safeguarding and child protection these would be addressed through other means, offences and sanctions. In terms of a provision that the domestic abuse offence would be aggravated where a reasonable person considers that the behaviour would be likely to adversely affect a child, and the child lives with either the victim or offender, it is considered that these cases will typically be captured by the see, hear or is present aggravator, given the condition that the child must live with one or both of the individuals. The Department would have concerns that such a provision could in practice be considered to apply to all incidents of abusive behaviour regardless of their nature, with anything being deemed to have an adverse impact, simply because those involved are part of a family unit. This could raise concerns in the context of the basis upon which increased sentencing is applied and also serve to weaken the impact of the child aggravators. More generally it should be noted that in sentencing an individual the court must determine the appropriate sentence taking account of all the

		particularly circumstances of the case. On this basis the Department is not minded to make provision for this. ~~It is considered that the offence locally, in relation to child aggravation, is wider than the Scottish offence in that there is no requirement for a reasonable person to consider that the behaviour would adversely impact on a child or that the child has to live either the victim or offender. The requirement in the Bill is simply that the child sees, hears or is present.~~ In terms of giving evidence the involvement of a child should only be utilised where considered necessary. The Victim Charter (for which the police and Public Prosecution Service are service providers) states that in providing services under the Charter, where the victim is a child or young person, the best interests of the child or young person will be a primary consideration and will be assessed on an individual basis. It also states that a child sensitive approach will be adopted, taking due account of their age, maturity, views, needs and concerns. The Charter states that a child or young person under 18 will be presumed to have specific protection needs and should receive the highest level of support and protection as they move through the criminal justice system.

		When giving evidence a person under 18 is automatically eligible for special measures (including video recorded police statement and giving evidence by live link. This would also include pre-recorded cross examination ahead of trial when introduced (likely for sexual offences for under 13s in the first instance)).
NIHRC	The Commission welcomes the purposes of clauses 8 and 9 as they are reflective of the specific impact that domestic abuse can have on children and deters the perpetrator from using children for the purposes of abusing the adult victim. **It recommends that safeguards are introduced to ensure clauses 8 and 9 are implemented in such a way that the best interests of the child are a primary consideration. This includes only requiring that evidence is obtained directly from the child victim or relevant child when necessary and that it is obtained in a child-friendly manner. It includes the child victim or relevant child only providing evidence directly to the court when it is necessary, that it is set up in an age-appropriate manner and that consideration is given to alternatives such as live links where appropriate. It also includes providing age-**	The involvement of a child in terms of the giving of evidence should only be utilised where considered necessary. The Victim Charter (for which the police and Public Prosecution Service are service providers) states that in providing services under the Charter, where the victim is a child or young person, the best interests of the child or young person will be a primary consideration and will be assessed on an individual basis. It also states that a child sensitive approach will be adopted, taking due account of their age, maturity, views, needs and concerns. The Charter states that a child or young person under 18 will be presumed to have specific protection needs and should receive the highest level of support and protection as they move through the criminal justice system. Under the Charter young people are entitled to

	appropriate psycho-social counselling to the child victim or relevant child before, during and after the trial.	• automatically be considered as eligible for special measures by the police and Victim and Witness Care Unit as part of their needs assessment; • have their statement audio-video recorded by the police, where this is appropriate; • have access to a victim support service provider and be provided with a Young Witness Pack by that service provider; • practice using the live link TV facility before the trial, when they are to use this to give evidence, where possible; • have the Victim and Witness Care Unit take appropriate steps to help them get the support they need as a result of the needs assessment process; and • speak to someone specially trained to listen to them and help then get over the crime, at any time during the investigation (and trial). This could be therapy or counselling. When giving evidence a person under 18 is automatically eligible for special measures (including video recorded police statement and giving evidence by live link. This would also include pre-recorded cross examination ahead of trial when introduced (likely for sexual offences for under 13s in the first instance)).
Bar of NI	The Bar agrees that the offence should be aggravated where it involves a child as provided for in this clause. **It notes that clause(2)(b) provides that the**	This provisions turns on the fact of whether the child saw, heard or was present. There is no requirement that the child has been aware of, understood or been adversely affected by the abuse. Furthermore, by

	aggravation applies where a child sees, hears or is present during a single incident of the course of behaviour which can include a verbal abuse incident or a physical assault and would query whether, in practical terms, the drafting of this clause at present could result in a child being required to give evidence as to their awareness of the accused's behaviour or any adverse impact caused by it.	virtue of this being an aggravating factor it has to be considered as having an adverse impact on the child. ~~It is considered that the offence locally, in relation to child aggravation, is wider than the Scottish offence in that there is no requirement for a reasonable person to consider that the behaviour would adversely impact on a child or that the child has to live with either the victim or offender. Given this, there is no associated condition that a child does not have to be aware of the abusive behaviour.~~ The involvement of a child in terms of the giving of evidence should only be utilised where considered necessary. The Victim Charter (for which the police and Public Prosecution Service are service providers) states that in providing services under the Charter, where the victim is a child or young person, the best interests of the child or young person will be a primary consideration and will be assessed on an individual basis. It also states that a child sensitive approach will be adopted, taking due account of their age, maturity, views, needs and concerns. The Charter states that a child or young person under 18 will be presumed to have specific protection needs and should receive the highest

	The Bar also notes the similarities between this Bill and the Domestic Abuse (Scotland) Act 2018 and **queries the Department's rationale for not**	level of support and protection as they move through the criminal justice system. Under the Charter young people are entitled to • automatically be considered as eligible for special measures by the police and Victim and Witness Care Unit as part of their needs assessment; • have their statement audio-video recorded by the police, where this is appropriate; • have access to a victim support service provider and be provided with a Young Witness Pack by that service provider; • practice using the live link TV facility before the trial, when they are to use this to give evidence, where possible; • have the Victim and Witness Care Unit take appropriate steps to help them get the support they need as a result of the needs assessment process; and • speak to someone specially trained to listen to them and help then get over the crime, at any time during the investigation (and trial). This could be therapy or counselling. When giving evidence a person under 18 is automatically eligible for special measures (including video recorded police statement and giving evidence by live link. This would also include pre-recorded cross examination ahead of trial when

	including in Clause 9, section 5(4) and (5) of this Act, in particular Section 5(5) which reads: "For it to be proved that the offence is so aggravated, there does not need to be evidence that a child – (a) has ever had any – (i) awareness of A's behaviour, or (ii) understanding of the nature of A's behaviour". In terms of clause 9(4), the Bar considers that **it is sufficient for the court to state on conviction that the offence was aggravated, record the conviction in a way that shows that the offence was aggravated and take the aggravation into account in determining the appropriate sentence under 9(4)(a), (b) and (c). It is of the view that the requirement under 9(4)(d) for the court to indicate how the offence affected the sentence is not necessary as it could disturb the judiciary's carefully weighted assessment as to the starting point of a sentence in cases involving domestic abuse as an aggravating factor.**	introduced (likely for sexual offences for under 13s in the first instance)). In terms of a provision that the domestic abuse offence would be aggravated where a reasonable person considers that the behaviour would be likely to adversely affect a child, and the child lives with either the victim or offender, it is considered that these cases will typically be captured by the see, hear or is present aggravator, given the condition that the child must live with one or both of the individuals. The Department would have concerns that such a provision could in practice be considered to apply to all incidents of abusive behaviour regardless of their nature, with anything being deemed to have an adverse impact, simply because those involved are part of a family unit. This could raise concerns in the context of the basis upon which increased sentencing is applied and also serve to weaken the impact of the child aggravators. More generally it should be noted that in sentencing an individual the court must determine the appropriate sentence taking account of all the particularly circumstances of the case. On this basis the Department is not minded to make provision for this. ~~It is considered that the offence locally, in relation to child aggravation, is wider than the Scottish offence in that there is no requirement for a reasonable~~

		~~person to consider that the behaviour would adversely impact on a child or that the child has to live with the victim or offender. The requirement in the Bill is simply that the child sees, hears or is present. Given this, there is no associated condition that a child does not have to be aware of the abusive behaviour.~~ The Department considered carefully the obligation that should be placed on the judiciary, taking into account the independence of the judiciary and the need not to interfere with this. It is for this reason that the provisions require the judiciary to simply explain how the fact that the offence is so aggravated affected the sentence imposed. This will not affect judicial discretion and it will be for the judiciary to determine what is appropriate to be provided, as well as the sentence awarded, given the particular circumstances of the case.

CLAUSE 10 – BEHAVIOUR OCCURING OUTSIDE THE UK

EFM

This clause provides that a course of behaviour can constitute a domestic abuse offence if it consists of or includes behaviour which occurred in a country outside the United Kingdom. The behaviour would need to constitute the domestic abuse offence if it occurred in Northern Ireland and the accused would need to be habitually resident in Northern Ireland or be a UK national (as defined in subsection (2)).

Organisation	Comments/Issues relating to Clause 10	Department of Justice Comments/ Position
Attorney General for NI, John Larkin QC	**Highlights a concern that in his view this clause appears to penalise acts occurring outside Northern Ireland that are not criminalised in the country in which they take place.** **By section 6(2) of the Northern Ireland Act 1998, a provision is outside the Assembly's legislative competence if it would form part of the law of a country or territory other than Northern Ireland and he has indicated that making behaviour criminal in territory where that behaviour is not otherwise criminal offends against that limitation.** The Committee has written separately asking the Minister to set out her position on the issue of legislative competence in relation to Clause 10.	The Minister has written separately to the Committee on this matter. The Minister and Department consider that it is within legislative competence to create an offence under Northern Ireland law even where the criminal conduct occurs outside Northern Ireland. Furthermore it is considered that clause 10 does not make law in another country – as recognised or enforceable as such by that state – even if behaviour in that country counts in the eyes of Northern Ireland law so far as governing the domestic abuse offence locally. In relation to behaviour in another country, that contributes towards the domestic abuse offence locally, individuals will not be penalised in that country or by its authorities even where they are potentially penalised in Northern Ireland under the rules of Northern Ireland law. As regards clause 10 of the Bill it is not considered that it forms part of the law of another country or confers functions other than in or as regards Northern Ireland.

		The Minister and the Department are satisfied that the clause is within the competence of the Assembly. This is also demonstrated through the Speaker's decision that the Bill is within the competence of the Assembly, the request from Westminster (and the recent approval by the Assembly) of a Legislative Consent Motion on near identical provisions relating to harassment as well as the approval by the Assembly for a range of other similar Northern Ireland related provisions.
NILGA	Notes the reference to 'habitual residence' is not defined. While there are two main requirements that must be proved there will be some categories of migrants who fall outside of this definition e.g. people on time limited visas, undocumented migrants, diplomatic staff and possibly asylum seekers (though refuges are considered to be habitually resident). **Suggests consideration should be given to how to close this legislative gap.**	Habitually resident is common legislative terminology that is used across the UK and is not defined in legislation given that it will be determined by the particular circumstances of the case. To be resident a person must be seen to be making a home that place. As such a short stay visitor or a person here only to receiving short term medical treatment is not resident. To be habitually resident a person must have taken up residence and lived in the country for a period. This need not be lengthy if the facts indicate that a person's residence has become habitual in nature at an early stage. It could be as little as a month, while between 1 and 3 months is likely to be appropriate to demonstrate habitual residence. It is considered that in order for the extraterritorial provisions to apply there must be a degree or permanency, tied to Northern Ireland, for the defendant. Critical to this will be whether the

		person is deemed to normally reside in Northern Ireland. To do otherwise would capture holiday makers or others in Northern Ireland for a short period, when they then leave the jurisdiction. This is not the intent of the provision and would go beyond the competence of the Assembly. The purpose is to ensure that when those that are normally resident in Northern Ireland are outside the jurisdiction that they cannot evade justice in relation to domestic abuse, reflecting the fact that the offence is a course of behaviour.
NICOSSA	States there should be a **caution about the evidence adduced where the behaviour has wholly or partly occurred outside the jurisdiction and this may require evidential rules to be considered.** This article is however to be welcomed especially where those who have been in this jurisdiction a short time and may now feel safe to allege domestic abuse have a lengthy history of domestic abuse in another jurisdiction.	The same evidential rules, in terms of admissibility, will apply whether the abusive behaviour is carried out in Northern Ireland or elsewhere. It should be noted that the offence cannot apply retrospectively, that is before the offence comes into operation, as is the case with the vast majority of legislation.
NIWEP	NIWEP welcomes inclusion of the provisions, which go some way towards ensuring compliance with the Istanbul Convention regarding extraterritorial jurisdiction and protecting in particular BAMER women and girls, who to date have had limited protection.	

	Would welcome clarification of how 'habitually resident in Northern Ireland' is defined.	This is common legislative terminology that is used across the UK and is not defined in legislation given that it will be determined by the particular circumstances of the case. To be resident a person must be seen to be making a home. As such a short stay visitor or a person here only to receiving short term medical treatment is not resident. To be habitually resident a person must have taken up residence and lived in the country for a period. This need not be lengthy if the facts indicate that a person's residence has become habitual in nature at an early stage. It could be as little as a month, while between 1 and 3 months is likely to be appropriate to demonstrate habitual residence.
NIHRC	NIHRC welcomes the extra-territorial application of the Bill regarding perpetrators, as set out in clause 10, and **advises that this provision is retained, in line with the Istanbul Convention**	No comment needed in response to this.

CLAUSE 11 – EXCEPTION WHERE RESPONSIBILITY FOR CHILDREN

EFM

Subsection (1) provides that the domestic abuse offence does not apply where a person has parental responsibility for another person who is under 18 years of age. It is considered that there are other provisions that deal with, and should more appropriately be used for, direct abuse of a child or young person by their parent or other carer.

Organisation	Comments/Issues relating to Clause 11	Department of Justice Comments/ Position
Victim Support NI	While understanding and supporting the reasoning for the exclusion from this legislation of children being abused by someone with parental responsibility for them Victim Support NI questions whether the existing suite of children's legislation does in fact have a direct equivalent to the provisions within this Bill and whether amendments to children's legislation are necessary to ensure parity of protection for child victims of coercive controlling behaviour and abuse. **Victim Support NI recommends that child legislation is examined to ensure that there is legal parity for child victims of domestic abuse whose abuser is someone with parental responsibility for them and if such parity does not exist this should be addressed by legislative provisions.**	The Department gave careful consideration to the scope of the domestic abuse offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member (except where parental responsibility applies, in order to prevent criminalisation of this as a domestic abuse matter) and that aggravation related to a child could be reflected while preventing criminalisation of parental responsibility. Having considered the matter further, and taking account of the concerns expressed, the Department is having discussions with colleagues in the Department of Health around a possible amendment to child protection provisions (contained in health legislation but amendment of which could be brought forward through the Domestic Abuse Bill subject to agreement) to make it explicit that where a child is ill treated, that this would also include non-physical abuse. Such provision would make clear that it would be an

		offence whether the suffering or injury caused to a child was physical or psychological in nature, for example isolation, humiliation or bullying.
Barnardo's	Barnardo's is also concerned that while this Bill closes a legislative gap to protect adult victims of domestic abuse it has not fully extended the provisions to protect children. **It states that the offences in existing legislation highlighted do not provide enough protection for children and with this exception included in this Bill children are still at risk of harm in their home. Furthermore contact visits can often be used as a means of continuing a pattern of abuse or exerting control.** **Barnardo's is concerned that this clause will leave children who are victims of parental coercive control with no legislative protection.**	The Department gave careful consideration to the scope of the domestic abuse offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member (except where parental responsibility applies, in order to prevent criminalisation of this as a domestic abuse matter) and that aggravation related to a child could be reflected while preventing criminalisation of parental responsibility. Having considered the matter further, and taking account of the concerns expressed, the Department is having discussions with colleagues in the Department of Health around a possible amendment to child protection provisions (contained in health legislation but amendment of which could be brought forward through the Domestic Abuse Bill subject to agreement) to make it explicit that where a child is ill treated, that this would also include non-physical abuse. Such provision would make clear that it would be an offence whether the suffering or injury caused to a child was physical or psychological in nature, for example isolation, humiliation or bullying. No other jurisdiction locally provides for criminalisation in relation to parental responsibility under domestic abuse legislation and our

		provisions in relation to the offence and children go further than other jurisdictions already provide for. In England and Wales the coercive control offence is available for victims under the age of 16, except where parental responsibility applies, while in Scotland and the Republic of Ireland the offence does not apply to family members. Where there are issues regarding safeguarding and child protection these would be addressed through other means, offences and sanctions. When determining an application for contact with a child, the court's paramount consideration is the child's welfare and in considering the child's best interests, the court is required to consider any harm which the child has suffered or is at risk of suffering.

NSPCC	As presently drafted, NSPCC states that the Bill allows for the possibility of an adult committing an offence of domestic abuse against a child but clause 11 of the Bill states that A (an adult) does not commit an offence towards B (a child) where A has parental responsibility over B. **While creating a minimum age of 16 for this offence, as called for in comments on clauses 8 and 9, would render this exception unnecessary, if such an age threshold is not introduced, NSPCC is opposed to this clause.** **The Explanatory Memorandum justifies the inclusion of the clause by providing that there are other, more appropriate provisions for dealing with such situations. However, these provisions risk making the law as it affects children unclear. The exception risks creating an inequity where the same behaviour is deemed unacceptable for some children and not for others**.	See above.
Children's Law Centre	**CLC is challenged as to the rationale and justification for this clause and strongly advocates for its removal from the Bill.**	See above.

	CLC states that failure to recognise children and young people as victims of abuse, for example through coercive and controlling behaviour of a parent, leaves children and young people less visible to services and at a much greater risk of continued abuse. **As ECHR Art 2 Right to Life, Art 3 Right to Freedom from Torture, Inhuman and Degrading Treatment and Art 8 Right to Private and Family Life read alongside Art 14 Non-discrimination are engaged the exclusion of children from the protection of the Bill means it is not human rights compliant.**	The Department has considered the content of the Bill and is content that it is Human Rights Compliant.
NICCY	**Highlights its concerns regarding the exceptions set out in clauses 11 and 17 relating to where a person has parental responsibility for a child affected by the offences within the Bill and requests that consideration is given to whether there is a necessity for such exclusions.** While the Explanatory and Financial Memorandum sets out that "it is considered that there are other provisions that deal with, and should more appropriately be used for, direct abuse of a child or young person by their parent or carer" **NICCY notes that as the Bill**	See above.

	introduces a new offence to address gaps in existing provisions, thorough consideration should be given to ensuring that all associated behaviours and harms in relation to children are reflected in existing law and procedure. We also note that officials and the Minister have stated orally that the exceptions will ensure that the Bill will not criminalise reasonable discipline or parenting techniques to manage children's behaviour, using the example of the withdrawing of privileges, however NICCY does not consider that the offence of domestic abuse could be reasonably engaged in such cases. NICCY further notes that the clause 12 defence on the grounds of reasonableness would also be engaged by any such possible situations and are disappointed that the exceptions should be presented in a way which may inadvertently trivialise the dynamics of violence and abuse within families and its impact on children.	

CLAUSE 12 – DEFENCE ON GROUNDS OF REASONABLENESS		
EFM This clause provides that it is a defence for the accused to show that the course of behaviour was, in the particular circumstances, reasonable. This may apply where, for example, the accused acted to prevent their partner from associating with certain persons or frequenting certain places if they are recovering from alcohol or drug addiction or to restrict their freedom of movement for their own safety due to the effects of suffering from dementia. Subsection (2) allows for the accused to adduce evidence that is enough to raise an issue as to whether the course of behaviour was reasonable, with the prosecution then needing to disprove this version of events. Nothing in this clause affects the broader requirement for the prosecution to prove beyond reasonable doubt that the offence has been committed.		
Organisation	**Views/Comments/Issues relating to Clause 12**	**Department of Justice Comments/ Position**
Women's Aid Federation	**Calls for this clause to be removed from the Bill – while Women's Aid understands that there is a need for a safeguard it is of the view that this should not come at the expense of the Bill having no teeth and is concerned that this defence is open to manipulation by abusers. Women's Aid states that it is perfectly possible for a perpetrator to present as a "reasonable person" who "might engage in behaviour which amounts to controlling their partner which may be, in the particular circumstances of the case, reasonable, for example because they reasonably believed that their**	The statutory defence in the domestic abuse offence is not a novel or unusual feature of legislation. It is found in other pieces of legislation including the Criminal Justice and Licensing (Scotland) Act 2010 in relation to the offences of threatening or abusive behaviour as well as stalking (s. 38 & s. 39), the Serious Crime Act 2015 in respect of the offence of controlling or coercive behaviour (s.76) and the Protection from Harassment (Northern Ireland) Order 1997 in relation to harassment. All these defences involve showing that the behaviour is reasonable in the circumstances. It is therefore a test well understood by legal representatives and the court. Importantly, the provision does not give a free pass

	actions were necessary to protect themselves, their partner or other family members from harm". This is an issue, not only in relation to the perpetrator presenting this position as a defence but also in relation to the "reasonable person" test as to whether behaviour was abusive and caused harmful effects to the woman.	to those that are accused of the defence. Evidence will be needed and an assessment then have to be made as to the behaviour is reasonable taking account of all the circumstances of the case. To make use of the defence enough evidence must be provided by the defence to satisfy the judge that the issue of reasonableness should be left before the tribunal of fact (i.e. either the judge or the jury depending on the court). It is not enough simply to claim the defence and that the behaviour was reasonable. If the defence is left to the judge or jury to consider, it will be for the prosecution to prove beyond reasonable doubt that the course of behaviour was not reasonable in the particular circumstances. It is an objective test that is applied, that is would a reasonable person in possession of the same information consider the behaviour reasonable in the particular circumstances of the case? The application of the defence will need to take into account the particular circumstances of the cases, including the positon of the victim. There is an evidential burden of proof on the defence, that on the balance of probabilities the actions were reasonable in the particular circumstances of the case. If the defendant fails to discharge this evidential burden they will not be able to rely on that defence. In addition, evidence of the reasonableness will have to be provided on two of more occasions, it cannot be a one off incident. It will be for the judge

		to decide if there is sufficient evidence, with a need to trust the courts to apply a balanced approach in reaching their conclusion. If the judge is satisfied that there is sufficient evidence it is then for the Public Prosecution Service to disprove the defence and prove the offence, reflecting the common positon since the introduction of the Human Rights Act 1998. Together these provide a check and balance. A person who used the defence and stated that they were acting in the other person's best interests but where a reasonable person with access to the same information would not find that behaviour to have been reasonable is very likely to have their defence rebutted by the prosecution (notwithstanding that each case, of course, turns on its own facts). During Committee stage the Bar was of the view that a defence of reasonableness should be available. The Public Prosecution Service stated that it is an appropriate clause and that they are confident that the courts will have no difficulty in ensuring that clause 12 works in a way that is fair to everyone, both victims and defendants. They also stated that the defence is consistent with other legislation for many offences and considered that the benefit of a statutory defence is that it provides clarity and a clear test for all the practitioners and, in particular the judiciary and juries who hear the cases.

		In the absence of a statutory defence, general defences would, of course, be available. However, the specific statutory defence defines clear parameters for how the defence is to work. It is considered an important balance within the Bill and to remove it would risk upsetting the calibration of the Bill as a piece, which is designed to prevent criminality arising unfairly. In addition, this defence is available in Scotland and England and Wales in relation to the domestic abuse offence and the offence of controlling or coercive behaviour respectively. Having spoken to colleagues there, there do not appear to be significant issues. This, of course does not mean that we are bound to follow suit or that the Department has not considered what is most suitable for Northern Ireland purposes. However, it is likely that the absence of a similar statutory defence in this Bill would be picked up on by defence practitioners and the risk of legal challenge could not be ruled out.
Women's Advocacy Project @ Dove House	**Supports the removal of the term "reasonable defence" stating that there is no circumstances in which it is reasonable to justify the use of Domestic Abuse. While understanding the use of reasonableness as a defence, they believe that the clause is open to manipulation. Many service users have informed the Project of**	See above.

	times during court hearings where they have been made to look weak and mentally unstable as a defence to the domestic abuse they have endured at the hands of their perpetrator. This is not acceptable and such language is dangerous in telling perpetrators that there is any sort of defence to violence or coercive control.	
Women's Policy Group NI	**The WPG NI supports the complete removal of the caveat of "reasonable defence", as they are deeply concerned with such measures being used as a justification of abuse by defendants. In creating such a provision, they are concerned that perpetrators can justify their abusive behaviour through portraying victims of abuse as mentally unstable, unable to make decisions for themselves, having a history of addiction that can be used against them and so on.** **Also concerned that this clause could allow for a defence where the accused can claim that they reasonably believed that the complainant was behaving unreasonably or that they were somehow incapacitated in terms of their decision-making. Further there is a risk that it could be turned in the**	See above.

	other direction – that defendants could argue that the behaviour or status of the complainant or victim caused them to become temporarily unreasonable. The Group highlights that several states in America allow for the use of this defence and its use has been connected to both acquittals for crimes as serious as murder and to reduced charges and/or sentences. **While opposed to the inclusion of this defence in the Bill, and believing that the risks of manipulation of the "reasonable defence" outweigh any benefits of having this clause, if it is allowed, WPG states that safeguards should be introduced to ensure that it is not used as a mechanism to further abuse victims.**	The Department is unable to comment on this in the absence of specific legislative provisions (in terms of comparability) and cases, as well as taking account of quite different legal systems.
Women's Resource and Development Agency	**Supports the need to remove Clause 12 and refers to the Women's Policy Group submission.**	See above.
NIWEP	**Also urges for the removal of this clause believing this is essential to ensure appropriate protection for all victims and avoid use of the defence in ways that contradict the spirit of the legislation.**	See above.
Women's Regional Consortium	**Another organisation that is very concerned about this defence and wants it removed from the legislation.**	See above.

	The main concern is for those who have disabilities either with their physical or mental health and those with addictions. **If it is determined that the defence should remain then the Consortium suggests that the clause should be very explicit in outlining the limited circumstances where it can be applied to ensure that it is not subject to too much interpretation or overly subjective as a way of ensuring that it cannot be used as a defence by perpetrators of domestic abuse.**	
HERe/Cara-Friend	**Recommends the removal of the 'reasonableness defence' believing it would be too open to misuse. Highlights the use of 'reasonableness' being invoked in the USA as a defence where a perpetrator has committed a violent act upon learning that someone is LGB and/or T, particularly impacting trans individuals.**	See above. The Department is unable to comment on this in the absence of specific legislative provisions (in terms of comparability) and cases, as well as taking account of quite different legal systems.
NIACRO	**NIACRO strongly disagrees with the inclusion of the 'reasonable defence' clause in the Bill and believes the clause has the potential to act as a 'loophole', causing cases to break down. Questions whether proper investigation and burden of evidence alone could determine 'reasonable**	See above

	defence' before a case is brought to court and anticipates that this potential loophole will be used by the defence and is potentially harmful in particular for those who experience disability, mental health disorders, addiction issues etc.	
Men's Advisory Project	While appreciating the rationale for the inclusion of a reasonableness defence in the legislation MAP states **the need to guard against any potential misuse and ensure that it can only be used in limited circumstances and not as further tool to abuse. Recommends that the burden of proof should be on the defence to prove that their reliance on this defence is not being raised knowingly to further abuse the victim via the mechanisms of the court and law. This defence must also not be accepted where it was used to cause fear.**	See above.
Victim Support NI	Victim Support also appreciates the motivation behind the inclusion of a reasonableness defence within the legislation but has **slight concerns that it could result in some of the most vulnerable victims of abuse being left unprotected. Believes that in its current form it may be a blunt instrument which could lead to**	See above.

	difficulties for any victim with a disability or vulnerability to seek protection from the law and recommends amending the Explanatory Memorandum to tighten up the circumstances in which it is anticipated that a reasonableness defence may be employed. **Also argues that "*evidence that is enough to raise an issue as to whether a course of behaviour was reasonable"* is much too broad, would allow for this defence to be abused too easily and recommends that the language used in the Bill governing the reasonableness defence is tightened.** **Victim Support suggests that a potential safeguard to mitigate against the potential harm and distress for victims where the 'reasonableness' defence was to be relied upon could be to require it to be handled via application and heard in a closed hearing rather than potentially in front of a jury. It recommends an addition to the Bill for a pre-trial requirement for sufficient evidence to be brought forward before the reasonableness defence is allowed to be heard in open court.**	

Relate	While not opposed to the principle that the Bill makes provision for a reasonable defence, **Relate also remains concerned about the scoping of the defence as contained in the Bill. It highlights that '*enough to raise an issue'* increases the opportunity for this defence to be abused by perpetrators and also believes that the use of the defence may also be abused by basing the 'reasonableness' of the defence on personal factors in the lives of those who experience abuse.** **Relate recommends that consideration be given to how the language used in the Bill and EFM can be tightened to reduce the possibility of this defence being used and applied incorrectly and to ensure there is a narrow and clearly defined basis for using it.**	See above.
Barnardo's	**Expresses concerns about the breadth of this clause and the potential for the provision to be abuse. Highlights that the definition of reasonable behaviour is not stated in the Bill and is therefore open to interpretation which raises serious concerns that vulnerable victims may continue to suffer abuse under the guise of reasonable behaviour. Believes that it is crucial**	See above.

	that clear guidance is developed to clearly outline the parameters of this defence and there is robust monitoring of its implementation.	
NEXUS	**Expresses concerns about the breadth Also has concerns that the reasonableness defence in its current form could lead to difficulties for any victim with a disability or vulnerability to seek protection from the law. States that it is recognised, that women with disabilities are twice as likely to be victims of domestic abuse, and, are less likely to report it due to multiple barriers. In many cases, the abuser of someone with a disability is also their carer. It raises concern regarding those with a caring responsibility and recommends that further scrutiny should be considered for those with a disability.** **NEXUS states that for a reasonableness test to be properly applied, both legal professionals and jurors would need an understanding of what coercive controlling behaviour looks like and what behaviours would meet this threshold.**	See above.
NSPCC	**NSPCC is not convinced that the defence contained in clause 12 is**	As with other legislation there are a wide range of terms in the Bill that attract their ordinary (typically

	sufficiently clear and would welcome more detail on how 'reasonable' is defined.	Oxford English dictionary) meaning. The guidance associated with the offence can also consider the issue of the defence.
The Rainbow Project	**Is concerned about the potential of the 'reasonableness' defence being perverted to justify the abuse of vulnerable, mentally ill or disabled people.** **The Rainbow Project states that if the reasonableness defence is to be maintained in the legislation then training and guidance for officers and agencies must ensure that the dignity and safety of vulnerable victims must not be sacrificed in defence of those who have caring responsibilities for them. It will also be important for police and other agencies to recognise the particular forms of abuse which can be experienced by LGBT people from other members of their family, including parents and that hostility to, disbelief of, or distress about a family member's sexual orientation or gender identify may not be used as a defence for abusive behaviour.**	See above.
NIPSA	**NIPSA has also expressed concerns about the reasonableness defence and potential for abuse by perpetrators stating that perpetrators could justify their abusive behaviour through**	See above.

	portraying victims of abuse as mentally unstable, unable to make decisions for themselves, having a history of addiction that can be used against them. Believes that this loophole could serve to break down a case, will be abused by the defence and is harmful for those victims who experience disability, mental health disorders or addiction issues caused by abuse.	
ICTU	**ICTU highlights that it shares the concerns of other organisations including the Commissioner for Older People in relation to the defence on grounds of reasonableness being used by a perpetrator to imply a victim has a mental illness or be used to justify their actions.** **ICTU agrees with the Belfast and Area Domestic and Sexual Violence and Abuse Partnership when they say that they 'feel the wording is not specific enough to prevent this from happening'. It also notes and agrees with Women's Aid and their insistence that the framing of this clause be explicit in outlining the circumstances where this is appropriate behaviour so that it cannot be used as a defence by perpetrators for domestic abuse. It would be particularly concerned about**	See above.

	how it could be used against women with disabilities, older women and women with mental health conditions. **It believes that the public and relevant professionals must be assisted in their understanding of what constitutes coercive control. This education is vital if the legislation is to have the desired effect – i.e. the protection of victims and prosecution of perpetrators.**	
PCS	**Has significant concerns regarding the defence on the grounds of reasonableness stating that the wording is not specific enough to prevent perpetrators from justifying their abuse or blaming the victim. Asks for the concerns raised by Women's Aid, the Belfast and Area Domestic and Sexual Violence and Abuse Partnership, the Commissioner for Older People, Nexus NI and ICTU to be listened to and addressed.**	See above.
NICCY	**NICCY highlights the importance of robust safeguards being in place in relation to the defence on grounds of reasonableness in order to ensure the defence is not used inappropriately and to further harm victims.**	See above.
COPNI	**COPNI is concerned that by allowing as a defence 'for A to show that the**	See above.

	course of behaviour was reasonable in the particular circumstances' (12.1), may allow abusive behaviour to go unpunished. In particular, it notes the phrasing of (12.2 (a)) that 'evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (1)'. **COPNI is of the opinion that given the power imbalance in many domestic situations and in practically all carer relationships (materially, financially, psychologically and/or physically) a codification such as this may be problematic. The phrase 'enough to raise an issue' seems sufficiently loose as to conceivably allow for victim-blaming as a means of defence. It cannot be the case that the dominant person in the relationship need only raise a query over the victim's behaviour in order to rationalise abuse, as such a formulation may allow. As a consequence COPNI would be supportive of any efforts to tighten up this clause while allowing the standard reasonable test as a defence but only when formulated in a manner which recognises the power dynamics of many domestic arrangements.**	

Belfast DSVP	While Belfast DSVP understands that there is a need to safeguard vulnerable adults or to protect family members it is **concerned that the reasonable defence could be used by a perpetrator to imply a victim has a mental illness or be used to justify their actions.** **The Partnership feels the wording is not specific enough to prevent this from happening.**	See above.
SEH&SCT **South Eastern DSVP**	**Both organisations believe that the defence of reasonableness is a concern as it may be used by perpetrators to manipulate victims and to explain their actions as justifiable. For example, many vulnerable victims self-medicate using alcohol/prescription drugs to help them cope with the circumstances they find themselves in and this clause will create greater difficulties and prove a hindrance in tackling Domestic Violence and Abuse. It will give abusers a "let out" clause and this is dangerous.**	See above.
NIPB	**The Board has identified the absence of a definition of what it is to be 'reasonable' for a defence to be provided as an issue and states that the concern is around those who are in care or in caring relationships and**	See above.

	those who have disabilities with their physical health and mental health.	
PSNI	The PSNI states that it understands the inclusion of such a defence however notes that the interpretation of what is a reasonable defence would rest with the courts. **Advises that 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. Suggests that 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'***	See above. In terms of the suggested revision to the clause the use of the additional text is not considered to add to the provisions. The use of the term particular circumstances is considered tight in that it must necessarily refer to what happened at the time for a particular reason (and this must be all of the circumstances). It is not considered to further add to the provision to refer to a reasonable person, including given that there are already two references to reasonable.
NIHRC	**Advises that the Department needs to be cautious with regard to this clause and ensure that effective safeguards are in place to prevent misuse of this clause by perpetrators, to the detriment of the victim.** This will require particular consideration of the potential vulnerabilities of the victim that require	See above.

	special protection such as women, children and person with disabilities. **The Commission states that consideration should be given to whether the burden of proof should instead rest with the defence to prove beyond reasonable doubt that the utilising of the defence is necessary and proportionate and recommends consulting with sector experts and victims on this specific issue.**	
Bar of NI	The Bar is of the view that a defence of reasonableness should be available in respect of the offence of abusive behaviour, particularly given the broad nature of the potential scenarios which could be caught under the Bill. The wording of clause 12 is acceptable and it remains for the prosecution to prove beyond reasonable doubt that the offence has been committed. However, it has **questions around the application of this defence as the explanatory memorandum accompanying the Bill only gives two examples, including where the accused acted to prevent a partner recovering from drug/alcohol addiction from associating with certain persons or frequenting certain places or where the accused restricted a relative's freedom of movement for**	See above. In terms of limited examples in the explanatory memorandum of what may be considered reasonable this is a short document, intended to provide an overview; even a more substantive document cannot cover every single eventuality that may occur. The guidance associated with the offence can provide further information in relation this.

	their own safety due to the effects of suffering from dementia. These two examples both appear to be sensible applications of this defence and it is worth noting that 12(2)(a) requires that the accused adduces evidence to raise this as an issue which may necessitate the provision of expert medical reports in certain circumstances. There are also likely to be more possible examples in which the behaviour could be considered reasonable in the circumstances and we would welcome further guidance on this.	
Education Authority	**Recommends defining the circumstances were a reasonable defense is linked to mental health e.g. severe dementia, and what underlying condition does not constitute reasonable defense.**	The guidance associated with the offence can provide further information in relation to types of defence.
Presbyterian Church in Ireland	**Notes that guidance will be required for the PSNI, prosecutors and other agencies to ensure that this provision is used within the spirit which it has been intended.**	As part of the operationalisation of the offence statutory guidance (which will be published) will be developed. This will be considered by a multi-agency Task and Finish Group involving our key statutory and voluntary sector partners, through which a range of views can be reflected.

CLAUSE 13 – ALTERNATIVE AVAILABLE FOR CONVICTION		
EFM This clause provides that, where the court is not satisfied that the domestic abuse offence has been committed, it can convict the accused of a specified alternative offence of harassment or putting people in fear of violence under the Protection from Harassment (Northern Ireland) Order 1997.		
Organisation	**Comments/Issues relating to Clause 13**	**Department of Justice Comments/ Position**
Men's Advisory Project	Supports this provision but **warns that this alternative may be misused and more significant forms of abuse will be reduced to this by prosecutors or the PSNI thus misrepresenting a course of abuse to a single incident of abuse.**	It is envisaged that an alternative offence would only be provided for where is it not possible to evidence a personal connection between two individuals (which is a requirement for the offence) and therefore convict of the domestic abuse offence, but it is considered that the behaviour would amount to harassment (or stalking in terms of the new stalking offence in due course). These are both course of behaviour offences (that is two or more incidents). It would be for the court to determine, on conviction, that an alternative offence should be provided for. This would only be considered when all the evidence of the case has been considered.
NIWEP	Agrees with this provision but **recommends that where this is used, the reasons why it was deemed that the domestic abuse offence was not proven should be recorded in the conviction. This is important to create clarity for the victim in the specific case, and also to support monitoring**	It is envisaged that an alternative offence would only be provided for where it is not possible to evidence a personal connection between two individuals (which is a requirement for the offence) and therefore convict of the domestic abuse offence, but it is considered that the behaviour would amount to harassment (or stalking in terms of the new stalking offence in due course). It is envisaged the number of instances of this would be

	and analysis of how the legislation is implemented. **It is also critical that the alternative is not used too readily, in order to ensure both effective implementation of the legislation and reassure victims and survivors at the symbolic function level.** This is included in the recommendations of CEDAW General Recommendation 35 on gender based violence against women.	low, given that both the police and Public Prosecution Service will have to have be satisfied in bringing forward a case that that two individuals are (or have been) partners, family members or in an intimate personal relationship. The reason for electing for an alternative offence should be set out as part of the case. Furthermore, operationally it would be difficult, and likely prohibitively expensive, to record why the domestic abuse offence was not proven on an individual case basis. This may also be as a result of a jury decision where the offence is tried at Crown Court. This is an issue that would be dealt with as part of the case.

CLAUSE 14 – PENALTY FOR THE OFFENCE

EFM

This clause provides that the maximum penalty on summary conviction (that is in a magistrates' court) is 12 months' imprisonment or a fine up to the statutory maximum (that is, £5,000). Where a case is tried on indictment (that is, in the Crown Court) the maximum penalty is 14 years' imprisonment or a fine or both. The nature of the penalties is intended to reflect the cumulative nature of the offence over time, that it may cover both physical and psychological abuse and also the intimate and trusting nature of the relationships involved.

Organisation	Comments/Issues relating to Clause 14	Department of Justice Comments/ Position
Women's Aid Federation NI	Welcomes the range of sentences available and ability to increase the sentence due to aggravation. **Notes that there is no court mandated programmes for perpetrators of domestic violence and abuse and again there needs to be investment and work in relation to the rehabilitation of abusers as there is such a rate of reoffending in these cases. Questions the non-referral to the Women's Safety element of court-mandated perpetrator programmes for the past 3-4 years via the Court process and also questions this major gap in holding perpetrators to account given the major increase in PSNI domestic abuse incidents year on year. Calls for the continuation of such programmes as the Promoting Positive**	A range of work is being undertaken in relation to behavioural change programmes. At present work can be undertaken with individuals by the Probation Board for Northern Ireland as part of the sentence handed down by a court. The Probation Board for Northern Ireland continue to deliver two court mandated programmes as additional requirements of a licence or order: (i) **Building Better Relationships** – a nationally accredited group work programme for male perpetrators of violence and abuse within intimate relationships. This aims to increase understanding of motivating factors in domestic abuse and reduce further incidents. (ii) **Respectful Relationships Interventions** – an intervention delivered one-to-one to develop awareness of what constitutes healthy, unhealthy and abusive relationships.

	Relationships programmes that have been piloted. **Also states that the very low attrition rate in these cases needs to be seriously addressed as does the entire PPS process in relation to domestic violence and holding perpetrators to account.**	An important component of both programmes is the Partner Support Worker, who supports the current (and if appropriate previous partner) of the participant, assists with safety planning, provides information about the programme and signposts to partner agencies, such as Women's Aid. In the past the Partner Support Worker role for the court programmes was fulfilled by Women's Aid. PBNI now train their own Partner Support Workers and consulted with Women's Aid NI on this at the time of the change. A more general pilot of court mandated behavioural change programmes was undertaken in Londonderry Magistrates Court in 2018. Uptake of this was much lower than expected. An evaluation of the programme has been undertaken and the Department is currently next steps. In addition, as part of its Problem Solving Justice approach the Department is piloting behavioural change programmes for those that are showing concerning behaviour but have not yet reached the criminal justice system. This is the second year that this has been funded across the five trusts in Northern Ireland for up to 60 individuals. Women's Aid are involved in providing Partner Support Workers for these programmes. Further decisions on the way forward will be dependent on the outcome of evaluations of the piloted programmes.

		Work is ongoing with the judiciary around the piloting of listing arrangements at Laganside Magistrates court later in the year, which would enable the clustering of domestic assault cases, accompanied by improved file quality processes and support for high risk repeat victims. There will be an increased focus on ensuring that prosecutions can proceed in the absence of a victim giving evidence. The Department is unable to comment on PPS' process.
Men's Advisory Project	Highlights that there are **no perpetrator programmes for females who perpetrate domestic abuse in NI nor are there any court mandated perpetrator programmes. Efforts to improve access to programmes must be made to provide safety and protection to society.** **Also highlights the necessity of the police to implement Child Contact orders. When ignored or breached, even repeatedly, this is not currently acted upon by the police and is regarded as a civil matter. While understanding the difficulty faced by the police in implementing such an order the abuse of the bond between**	See above. Both the Building Better Relationships and Respectful Relationships Interventions programmes referred to involve group work programme for males, similarly with the pilot behavioural change programmes with the trusts. However, bespoke one to one work can be delivered to female perpetrators subject to supervision. Breach of a contact order is not a criminal offence so the police do not have an enforcement role, rather it is for the court that made the order to enforce it. Breach of a contact order is punishable as a contempt of court, although a court may be reluctant to imprison a parent who has breached a contact order out of concern for the welfare of the child. The Gillen Review of Family Justice made a number of recommendations to enhance the

	child and parent cannot continue to be ignored.	powers of courts to deal with breaches of contact orders, which are being considered by the Department and the judiciary.
HERe/Cara-Friend	Believes that there should **be sentencing guidelines for domestic abuse cases to ensure consistency across courts.**	The issue of sentencing guidelines will be considered as part of the work being undertaken on operationalisation of the Bill and discussions are being held with the Judicial Studies Board in relation to this issue. A sentencing guidelines paper on domestic violence and abuse, by His Honour Judge Burgess, is currently available on the 'Sentencing Guidelines for Northern Ireland' section of the Judiciary NI website. In addition, judges are able to draw on sentencing guidelines laid down in previous cases by the Court of Appeal, and can take into account guidelines from the English Sentencing Council (which includes the overarching guidelines on domestic violence). Importantly, the Bill provides for a number of statutory aggravators (which can enable the sentence awarded to be increased) which are not available in England and Wales.
	States that any restorative justice must be victim led and non-compulsory with recognition of the power the perpetrator has exercised over the victim and how this may impact their response.	The Department considers that there is there is potential for restorative justice and appropriate interventions in custody and in the community to contribute to the rehabilitation of offenders who demonstrate this type of abusive behaviour, but it requires sensitive handling and significant preparation by trained experts to ensure that

		victims are in no way re-victimised by the process. Restorative justice provides a unique opportunity to better meet the needs of, and provide redress for the harm caused to victims of crime while reducing offending. To ensure the right approach is adopted the Department is currently consulting on the development of an adult restorative justice strategy for Northern Ireland (through to mid September). The Department would welcome responses to the consultation from interested parties, including groups and fora that support and represent victims and survivors of domestic violence and abuse. Any future work to develop restorative responses will be undertaken in partnership with key stakeholders, including victims. Involvement of a victim would be their decision.
Mid and East Antrim Borough Council	Believes that the penalties provided in the Bill are appropriate and adequate but proposes that **clause 14(b) be amended to reflect the possibility of an unlimited fine when convicted on indictment to match similar offences to that in this Bill.**	On summary conviction the maximum fine is a level five fine of up to £5000. On conviction on indictment, at Crown Court, a fine can be unlimited. This is the case for the domestic abuse offence, with standard legislative text for fines at this court tier used in the Bill.
NIPSA **ICTU** **Women's Regional Consortium** **PCS NI**	All these organisations welcome the maximum penalties set out in the Bill and believe they reflect the serious nature of domestic abuse. They **recommend that sentencing guidelines for domestic abuse cases**	The issue of sentencing guidelines will be considered as part of the work being undertaken on

	should be developed to support and encourage consistency across courts. This does not take away from the autonomy of an individual judge but will provide a framework within which autonomous and professional judgement can be most effectively employed.	operationalisation of the Bill and discussions are being held with the Judicial Studies Board in relation to this issue. A sentencing guidelines paper on domestic violence and abuse, by His Honour Judge Burgess, is currently available on the 'Sentencing Guidelines for Northern Ireland' section of the Judiciary NI website. In addition, judges are able to draw on sentencing guidelines laid down in previous cases by the Court of Appeal, and can take into account guidelines from the English Sentencing Council (which includes the overarching guidelines on domestic violence). Importantly, the Bill provides for a number of statutory aggravators (which can enable the sentence awarded to be increased) which are not available in England and Wales.
NICCOSA	Assumes the maximum penalties will be subject to judicial guidance on sentencing guidelines.	See above.
NIACRO	Recognises that sentencing requires a balance of fairness based on consistency and room for discretion that accounts for mitigating circumstances. **Recommends establishing sentencing guidelines to determine the appropriate penalty.** **Also highlights the need for earlier interventions and notes that there appears to be no programmes**	See above. A range of work is being undertaken in relation to behavioural change programmes. At present work can be undertaken with individuals by the Probation

	available to those who engage in domestic abuse behaviour outside of statutory provision for people who recognise their need of support to change.	Board for Northern Ireland as part of the sentence handed down by a court. The Probation Board for Northern Ireland continue to deliver two court mandated programmes as additional requirements of a licence or order: (i) **Building Better Relationships** – a nationally accredited group work programme for male perpetrators of violence and abuse within intimate relationships. This aims to increase understanding of motivating factors in domestic abuse and reduce further incidents. (ii) **Respectful Relationships Interventions** – an intervention delivered one-to-one to develop awareness of what constitutes healthy, unhealthy and abusive relationships. A more general pilot of court mandated behavioural change programmes was undertaken in Londonderry Magistrates Court in 2018. Uptake of this was much lower than expected. An evaluation of the programme has been undertaken and the Department is currently next steps. In addition, as part of its Problem Solving Justice portfolio the Department is piloting behavioural change programmes for those that are showing concerning behaviour but have not yet reached the criminal justice system. This is the second year that this has been funded across the five trusts in

		Northern Ireland for up to 60 individuals. Further decisions on the way forward will be dependent on the outcome of evaluations of the piloted programmes.
Parenting NI	**Is concerned that no specific mitigation or exception has been detailed for abuse of a parent by an under-18-year-old child. The effect of this bill on families were abuse exists between a child and a parent must therefore be considered.** Is conscious that the penalties for the abuse are either fines or imprisonment. While these are appropriate and reasonable for adult perpetrators, such potential punishment is unlikely to motivate abused parents of younger children to report this crime or seek help. A child will be unable to pay any fine imposed – this money if it were sought would instead likely be from the victim. Equally, while parents will wish for the abuse to end, it is possible that they will prefer to continue to suffer rather than have their child imprisoned. **Parenting NI does not agree that the stipulated penalties are likely to provide better outcomes for families experiencing child-to-parent violence if a child would either be imprisoned or**	The sentence awarded in a particular case (as well as any fine) will be dependent on, and take account of, the particular circumstances of the case. As with all other offences, in deciding whether to charge a young person, consideration will be given to the circumstances of the case, whether the test for public prosecution (including a public interest test) is met and what alternative disposals may be available. Youth Justice Agency staff are trained to recognise and respond to issues of domestic abuse in all its forms, whether a child is a victim or perpetrator. They are required to negotiate the procedural and process requirements of both the justice and safeguarding systems as they impact on children and adults, whilst supporting service users to engage with a range of support requirements and safety plans. Specialised interventions are delivered as part of community or court-ordered disposals, often in collaboration with other statutory and voluntary organisations.

	not face any penalty nor be mandated to get help/support on threat of penalty. Families would be unlikely to see this bill as a safety valve.	The experience in other jurisdictions are that the number of young people charged with an offence has been relatively low. We understand that in Scotland, for example, around 1.5% of those reported and prosecuted were under the age of 18 (around 15 - 20 individuals), while in England and Wales we understand that only two individuals under the age of 18 have been convicted. In terms of those who display harmful behaviour their needs should be considered separately from the needs of the person being abused. There should be a co-ordinated approach by Health and Social Care Trusts, the police, Public Protection Arrangements NI, the Public Prosecution Service, victim support services and youth justice bodies. Schools and colleges may need to be involved as part of the co-ordinated response to provide education and awareness so that relevant professionals from this sector can understand the risks the young person may pose to other young people. This co-ordinated response should include working with the young person whose behaviour has been harmful and those working with the young person who has been harmed.
	They recommend that where there is child-to-parent abuse either an amending clause stipulating that where the offender is (1) the child of the victim and (2) under the age of 18 that the penalty be something other than	Children and young people who abuse others should be held responsible for their abusive behaviour, while being identified and responded to in a way that meets their own needs as well as protecting others. Professionals should consider whether a young person who abuses others should

	imprisonment - further support would need to be provided to this family to address this abusive behaviour – or specific sentencing guidance be provided to relevant officials that children under the age of 18 who abuse their parents are not to be imprisoned unless they present a real and present danger that cannot otherwise be mitigated.	be the subject of a Child Protection Case Conference if he or she is considered personally to be at risk of continuing significant harm. While appreciating the concerns expressed it is important to ensure that the offence is available in cases of domestic abuse against parents, vulnerable elderly grandparents as well as ongoing and persistent abuse in teenage relationships. The matter of the sentence awarded, including any financial penalty, is a matter for the judiciary having taken account of the particular circumstances of the case. For the Department to stipulate conditions associated with this could be seen to interfere with the independence of the judiciary. The issue of sentencing guidelines will be considered as part of the work being undertaken on operationalisation of the Bill and discussions are being held with the Judicial Studies Board in relation to this issue. A sentencing guidelines paper on domestic violence and abuse, by His Honour Judge Burgess, is currently available on the 'Sentencing Guidelines for Northern Ireland' section of the Judiciary NI website. In addition, judges are able to draw on sentencing guidelines laid down in previous cases by the Court of Appeal, and can take into account guidelines from the English Sentencing Council

		(which includes the overarching guidelines on domestic violence).
Derry City and Strabane District Council	**The Council feels that a maximum sentence of 12 months is not a strong enough deterrent for an act that can potentially result in severe mental/physical damage or death and does not agree that 14 years is a long enough sentence for an act of domestic violence murder.** **The Council also recommends that if the perpetrator is a repeat offender (be that against the same person or a different person) this should be taken into account and sentencing should be reflective of this.**	The maximum sentence of 12 months is that associated with conviction in a summary (magistrates') court. The domestic abuse offence is also triable as an indictable offence at Crown Court, where the sentence could be up to 14 years. The court tier chosen for court proceedings will be dependent on the particular circumstances of the case and nature of the abuse. The maximum penalty for the domestic abuse offence is aligned with other serious offences involving serious violence or rape. It remains open for incidents of domestic abuse to be progressed under other charges where appropriate, for example where this involves a rape. If a murder were to occur (a domestic homicide) this would be treated as such and incur the maximum penalties associated with this; it would not be progressed under the domestic abuse offence. The murder charge could be progressed along with a domestic abuse aggravator that would enable the sentence to be increased, up the maximum available. Given that the domestic abuse offence is based on a course of behaviour this will enable the court to take into account a number of incidents as well as the individual circumstances of the case.
NIPB	The Board understands and supports that the Bill includes maximum penalty in the	

	Magistrates' Courts of 12 months imprisonment, and 14 years in the Crown Court. It may also include a fine. The Board understands that the maximum sentences would 'most likely' be applied in cases where there is this type of coercive control in conjunction with physical violence - '*the maximum sentence will be reserved for the most serious cases. It could relate to an offence that is entirely one of psychological abuse, which may have occurred over a significant time-period. However, it is more likely to relate to coercive behaviour that includes both psychological and physical abuse'.* **While this is the case, the Board has expressed concern surrounding the very nature of this sentencing, and would like to draw attention to the possibility of cases where there is no evidence of physical abuse and where coercive control was prominent and how this could lead to homicide.**	The sentence granted will ultimately depend on the nature of the offence and the particular circumstances of the case. A case involving a catalogue of domestic abuse would be sentenced according to the particular circumstances of the case. As stated the higher penalties could relate to an offence of psychological abuse, that is there is no evidence of physical abuse. The matter of the sentence awarded, including any financial penalty, is for the judiciary to determine having taken account of the particular circumstances of the case. The issue of sentencing guidelines will be considered as part of the work being undertaken on operationalisation of the Bill

		and discussions are being held with the Judicial Studies Board in relation to this issue. A sentencing guidelines paper on domestic violence and abuse, by His Honour Judge Burgess, is currently available on the 'Sentencing Guidelines for Northern Ireland' section of the Judiciary NI website. In addition, judges are able to draw on sentencing guidelines laid down in previous cases by the Court of Appeal, and can take into account guidelines from the English Sentencing Council (which includes the overarching guidelines on domestic violence).
SEHSCT **South Eastern DSVP**	**Both organisations are concerned that sentencing for murder of a partner incurs a lesser sentence than murders not domestically motivated and believes that this warrants further exploration and consideration.**	While the Department is unable to comment on the sentence provided in individual cases the sentence granted will ultimately depend on the nature of the offence and the particular circumstances of the case. The judiciary are highly trained and experienced independent professionals whose job is to balance all the relevant factors to arrive at an appropriate sentence. If a murder (a domestic homicide) were to occur following the introduction of the new domestic abuse offence the murder charge could be progressed along with a domestic abuse aggravator that would enable the sentence to be increased, up the maximum available.
Women's Policy Group NI **Women's Resource and Development Agency**	All these organisations also **recommend that sentencing guidelines for domestic abuse cases should be developed to support and encourage**	The issue of sentencing guidelines will be considered as part of the work being undertaken on operationalisation of the Bill and discussions are

The Women's Advocacy Project @ Dove House	**consistency across courts.** This does not take away from the autonomy of an individual judge but will provide a framework within which autonomous and professional judgement can be most effectively employed. In addition, with the introduction of coercive control as domestic abuse it is absolutely imperative that clear guidelines are in place in order to not create a "hierarchy of abuse". Recidivism is a real problem with these kinds of offences, short prison sentences and decisions to refer serious cases to lower courts communicates something to the public regarding the severity of the offence and it is regrettable that the system does not priorities true rehabilitation. In the case of the often suggested approach of restorative justice there are	being held with the Judicial Studies Board in relation to this issue. A sentencing guidelines paper on domestic violence and abuse, by His Honour Judge Burgess, is currently available on the 'Sentencing Guidelines for Northern Ireland' section of the Judiciary NI website. In addition, judges are able to draw on sentencing guidelines laid down in previous cases by the Court of Appeal, and can take into account guidelines from the English Sentencing Council (which includes the overarching guidelines on domestic violence). Importantly, the Bill provides for a number of statutory aggravators (which can enable the sentence awarded to be increased) which are not available in England and Wales. As part of its Problem Solving Justice portfolio the Department is piloting behavioural change programmes for those that are showing concerning behaviour but have not yet reached the criminal justice system. This is the second year that this has been funded across the five trusts in Northern Ireland for up to 60 individuals. Further decisions on the way forward will be dependent on the outcome of evaluations of the piloted programmes. The Department considers that there is there is potential for restorative justice and appropriate interventions in custody and in the community to

	serious concerns as it applies to the crime of domestic abuse. **For these reasons the organisations believe that mandatory sentences for guilty pleas and when found guilty deserve serious consideration in the absence of a better way to adequately capture the seriousness of the offence and the need for thorough rehabilitation.**	contribute to the rehabilitation of offenders who demonstrate abusive behaviour, but it requires sensitive handling and significant preparation by trained experts to ensure that victims are in no way re-victimised by the process. Restorative justice provides a unique opportunity to better meet the needs of, and provide redress for the harm caused to victims of crime while reducing offending. To ensure the right approach is adopted the Department is currently consulting on the development of an adult restorative justice strategy for Northern Ireland (through to mid September). The Department would welcome responses to the consultation from interested parties, including groups and fora that support and represent victims and survivors of domestic violence and abuse. Any future work to develop restorative responses will be undertaken in partnership with key stakeholders, including victims. Involvement of a victim would be their decision. It is unclear whether the reference to mandatory sentences is referring to mandatory minimum sentences. If so, in addition to the above the judiciary are highly trained and experienced independent professionals whose job is to balance all the relevant factors to arrive at an appropriate sentence. For sentences in more serious offences, there is also an option for the Director of Public Prosecutions to refer a sentence which is

		considered unduly lenient to the Court of Appeal for consideration. For the legislature to dictate a mandatory minimum sentence would fetter this judicial independence and run the risk of resulting in unfair and undesirable outcomes. In terms of rehabilitation we recognise the unique dynamics and characteristics of domestic violence and abuse as it relates to recidivism. The new offence will provide an opportunity to enhance understanding with regard to this type of offending and further ensure that those involved in the criminal justice response recognise the need for robust assessment and risk management when considering the most appropriate course of action to address domestic abuse and reduce reoffending and re-victimisation. It is considered that there is potential for restorative justice and appropriate interventions in custody, and in the community, to contribute to the rehabilitation of offenders who demonstrate this type of abusive behaviour, but it requires sensitive handling and significant preparation by trained experts to ensure that victims are in no way re-victimised by the process.
Barnardo's	**Advises that specialist early intervention support should be available to young people exhibiting abusive behaviours in order to break the cycle before adulthood. Support**	In terms of those who display harmful behaviour their needs should be considered separately from the needs of the person being abused. There should be a co-ordinated approach by Health and Social Care Trusts, the police, Public Protection

	services must be child-centred and trauma-informed, designed to support and protect young people and divert those displaying abusive behaviour from criminalisation. Children displaying harmful sexual behaviour should be treated as children first and foremost and there is a clear need to develop greater understanding of why children offend in this way.	Arrangements NI, the Public Prosecution Service, victim support services and youth justice bodies. Schools and colleges may need to be involved as part of the co-ordinated response to provide education and awareness so that relevant professionals from this sector can understand the risks the young person may pose to other young people. This co-ordinated response should include working with the young person whose behaviour has been harmful and those working with the young person who has been harmed. Children and young people who abuse others should be held responsible for their abusive behaviour, while being identified and responded to in a way that meets their own needs as well as protecting others. Professionals should consider whether a young person who abuses others should be the subject of a Child Protection Case Conference if he or she is considered personally to be at risk of continuing significant harm.
NIWEP	States that higher sentences are appropriate in light of the harm caused by domestic abuse and also act as a deterrent. **Recommends that capacity building of justice agencies to ensure consistent sentencing is a critical element necessary to ensure the legislative provisions are used appropriately and to their full capacity and that**	The issue of sentencing guidelines will be considered as part of the work being undertaken on operationalisation of the Bill and discussions are being held with the Judicial Studies Board in relation to this issue.

	sentencing guidelines for domestic abuse cases are developed to provide a framework within which autonomous and professional judgement can be most effectively employed and to support and encourage consistency across courts.	A sentencing guidelines paper on domestic violence and abuse, by His Honour Judge Burgess, is currently available on the 'Sentencing Guidelines for Northern Ireland' section of the Judiciary NI website. In addition, judges are able to draw on sentencing guidelines laid down in previous cases by the Court of Appeal, and can take into account guidelines from the English Sentencing Council (which includes the overarching guidelines on domestic violence). Importantly, the Bill provides for a number of statutory aggravators (which can enable the sentence awarded to be increased) which are not available in England and Wales.
	Also recommends the development of offender rehabilitation and appropriate restorative justice. NIWEP supports the inclusion of restorative justice as part of the criminal justice process but not as a separate system. **NIWEP would also welcome inclusion of a criterion that the perpetrator is capable of learning and benefitting from restorative justice more profoundly than in terms of escaping prosecution and potentially conviction. This would ideally include a test of some kind and monitoring over time to assess the effectiveness of the approach.**	Restorative justice provides a unique opportunity to better meet the needs of, and provide redress for the harm caused to, victims of crime while reducing offending. To ensure the right approach is adopted the Department is currently consulting on the development of an adult restorative justice strategy for Northern Ireland (through to mid September). The Department would welcome responses to the consultation from interested parties, including groups and fora that support and represent victims and survivors of domestic violence and abuse. Any future work to develop restorative responses will be undertaken in partnership with key stakeholders, including victims.

	States that a review of the process and proceedings to ensure that victim impact statements are used effectively is required.	Victim Personal Statements can be made by victims for consideration by the judge. A leaflet issues to advise people of this facility. Support in completing a statement can be provided by Victim Support NI and NPSCC.
Bar of NI	**Takes the view that provision in clause 14(b) that the maximum penalty for a case tried on indictment of 14 years' imprisonment or a fine or both is particularly high.** The Serious Crime Act 2015 specifies a term not exceeding five years. In cases involving serious abuse, it seems highly likely that conduct will be capable of being prosecuted as a discrete offence of violence or a sexual offence under existing legislation. Many of these carry very significant sentences and it is there that the gravity will be reflected. Whilst the Bar appreciates that the nature of the penalties is intended to reflect the cumulative nature of the offence over time, it is difficult to envisage a course of behaviour amounting to abuse which would not include violent or sexual offences and yet might warrant a 14-year prison sentence. It is also hard to envisage the PPS deciding not to prosecute an allegation of rape or serious violence as a discrete offence. However, the Bar notes that Part Two of the Bill goes on to provide that any such offence	The maximum penalty for the domestic abuse offence is aligned with other serious offences involving serious violence or rape. There is a significant difference between the domestic abuse offence and the offence under Section 76 of the Serious Crime Act 2015 in that locally the offence will include both non-physical abuse as well as physical and sexual violence. In England and Wales the scope of their offence is limited to a "fear, on at least two occasions that violence will be used". Their offence does not capture physical or sexual violence, which is reflected in the maximum five year sentence. The maximum sentence of 14 years locally is considered to be appropriate, given the overarching nature of the offence, and is in line with other serious offences that may include violence. The Department would concur that in cases involving serious abuse, the conduct may be prosecuted as a discrete offence of violence or a sexual offence under existing legislation (and could be aggravated because it involves domestic abuse). However, were the domestic abuse offence to be used, covering both physical and non-physical abuse, it is important that the maximum sentence available reflects this.

	could be aggravated because it also involves domestic abuse. **The Bar questions why the Department did not consider including a provision to enable the court to consider making a restraining order when the court considers it appropriate akin to Section 5 and Section 5A of the Protection from Harassment Act 1997.**	The Department considers that there would be nothing to prevent the court doing this, or the Public Prosecution Service putting this forward, as part of the case – particularly where an alternative offence of harassment would be imposed - without it being stipulated in the Bill. Articles 7 and 7A of the Protection from Harassment (Northern Ireland) Order 1997 (the local equivalent of Sections 5 and 5A of the Protection from Harassment Act 1997) provide that "a court when sentencing or otherwise dealing with a person convicted of an offence may … make an order [*that is a restraining order*] under this article [*that is article 7*]. The linkage to specified offences under Articles 4 and 6 of the 1997 Order was removed in 2009, providing greater scope as to when a restraining order could be imposed and not limiting the provision to when a harassment offence or offence of putting a person in fear of violence was imposed by the court. As a result the court already has the power to make a restraining order on conviction for any offence (which would include the new domestic abuse offence) and not just on conviction for an offence under the 1997 Act, where the necessary conditions are met that there is conduct that amounts to harassment or will cause a fear of violence.

Ulster University – Dr McGinn and Dr Lagdon	**States that judicial penalties should not make allowances for rehabilitation efforts and research supports that the likelihood that perpetrators of domestic violence will change is low. Argues that the new order should expressly state that engagement with therapy or behaviour change programmes is not permitted as grounds for leniency in either family or criminal courts.** **Also argues that judicial penalties should be designed primarily for the purpose of specific and general deterrence and incapacitation to visit further abuse upon their victims and custodial sentences are more often the correct answer in the prosecution of domestic violence perpetrators.** Responding to domestic abuse with the seriousness it deserves will also project a clear message at a societal level that such	It is the judge alone who decides on the individual sentence given. They are guided by a number of considerations: • the maximum sentence they can give; • whether the defendant pleaded guilty or not; • the level of sentences in similar cases in the past, that is 'case law'; • any available sentencing guidance; • any mitigating or aggravating factors; • the circumstances set out in background reports; • any Victim Impact Report, which is prepared by an expert, for example a psychologist; and • any Victim Impact Statement made by the victim of the crime. The sentence granted will ultimately depend on the nature of the offence and the particular circumstances of the case. Fairness requires sentencing to respect the rights of victims, offenders and their families. There are a number of purposes of sentencing including some form of penalty or loss to the offender, representing retribution for society; protection of the public; deterring further offending; changing an offender's behaviour to prevent future offending and reduce crime; and acknowledging the harm caused. Sentences may also aim to provide a restorative outcome.

	abusive behaviour is not and should not be tolerated.	More generally a key focus of the work of the Department is in the field of Problem Solving Justice, a new approach aimed at tackling the root causes of offending behaviour and reducing harmful behaviour. The penalties associated with the Bill are intended to reflect the seriousness of domestic abuse, with a maximum penalty of up to 14 years, taking account of the particular circumstances of the case.

CLAUSE 15 – AGGRAVATION AS TO DOMESTIC ABUSE

EFM

Clause 15 provides that any offence (other than the domestic abuse offence) may be aggravated because it involves domestic abuse. The aggravation could be specified alongside charges for all sorts of offences, for example criminal damage, assault, grievous bodily harm, threats to damage property or threats to kill, etc.
Subsections (3) and (4) require that, where the charge as well as the aggravation is proved, the court must state on conviction that it is aggravated and take the aggravation into account when determining the sentence, as a factor which increases the seriousness of the offence. The court is also required to state how the aggravation has affected the sentence and record the conviction in a manner which shows that the offence was aggravated by reason of involving domestic abuse.

Subsection (5) makes it clear that if the aggravation is not proved, but the charge is proved, conviction is as if the aggravation were not referred to alongside the charge.

Organisation	Comments/Issues relating to Clause 15	Department of Justice Comments/ Position
Women's Aid Federation	**Recommends including repeat offences to take into account those serial perpetrators of domestic violence and abuse offences on not just one woman but several different women.**	The domestic abuse offence is a course of behaviour offence, which will allow a pattern of abusive behaviour to be criminalised. If a number of offences were brought forward at the same time by different individuals these would be grouped together for the purpose of charging. If the reports are brought forward at different times they would be treated individually. As part of the sentencing it will be for the judge to take account of the particular circumstances of the case. The offending history of the defendant would be an aggravating factor in determining an appropriate sentence in the case. Any relevant previous convictions are taken into account by the court

		when sentencing, with repeat offending therefore recognised in the sentence. This is one of the most common aggravating or mitigating factors the court will always consider. The prosecutor is required to advise the court of relevant record. There is no further evidence of that previous offending required.
	Has concerns regarding how this evidence would be gathered in relation to children and young people and the evidence of the impact and how that evidence could be challenged in court – **Women's Aid does not wish any victim of domestic violence and abuse to be challenged in court and subject to revictimisation and is therefore looking for assurances that this would be completed in a child centred way with formal protocols in place with regard to gathering of evidence. More detailed measures need to be put in place in relation to this process.**	The involvement of a child in terms of the giving of evidence should only be utilised where considered necessary. The Victim Charter (for which the police and Public Prosecution Service are service providers) states that in providing services under the Charter, where the victim is a child or young person, the best interests of the child or young person will be a primary consideration and will be assessed on an individual basis. It also states that a child sensitive approach will be adopted, taking due account of their age, maturity, views, needs and concerns. The Charter states that a child or young person under 18 will be presumed to have specific protection needs and should receive the highest level of support and protection as they move through the criminal justice system. Under the Charter young people are entitled to • automatically be considered as eligible for special measures by the police and Victim and

		Witness Care Unit as part of their needs assessment; • have their statement audio-video recorded by the police, where this is appropriate; • have access to a victim support service provider and be provided with a Young Witness Pack by that service provider; • practice using the live link TV facility before the trial, when they are to use this to give evidence, where possible; • have the Victim and Witness Care Unit take appropriate steps to help them get the support they need as a result of the needs assessment process; and • speak to someone specially trained to listen to them and help then get over the crime, at any time during the investigation (and trial). This could be therapy or counselling. When giving evidence a person under 18 is automatically eligible for special measures (including video recorded police statement and giving evidence by live link. This would also include pre-recorded cross examination ahead of trial when introduced (likely for sexual offences for under 13s in the first instance)).
Men's Advisory Project	Supports the inclusion of a generic aggravator across all aspects of the law. **States that it is important that this aggravator is recorded throughout the entire process from initial police report to resolution in court to enable the use**	Provision is made in the Bill, in relation to both the domestic abuse offence and aggravated offences (that is any other offence that involves domestic abuse) that a victim will automatically be eligible for consideration of special measures. Final decisions

	of special measures for those giving evidence and offer mechanisms of support and protection to those facing abuse. **In cases where a generic aggravator is sought and either accepted or rejected at sentencing stage there should be an obligation on the trial judge to specify whether the aggravator is being applied and for them to provide reasons for their decision-making. This information should be collated to ensure a better understanding of the wider pattern of abuse, to ensure that the courts use the aggravator when it is available and to address any inequality men face as victims of domestic abuse.**	on the granting of special measures are a matter for the judiciary. Where a general aggravator applies a decision will have to be taken as to whether or not the offence is aggravated as part of the conviction process. Where an offence (including the domestic abuse offence) is aggravated the Bill requires the court to state on conviction that the offence is aggravated, record it in a way that shows that it is aggravated, treat the fact that the offence is aggravated as a factor that increases the seriousness of the offence and, in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed. Data will be collected in relation to the domestic abuse offence and aggravators. Operationally it would be difficult, and likely prohibitively expensive, to record why the domestic abuse offence was not proven. This is an issue that would be dealt with as part of the case
Victim Support NI	Also supports the inclusion of a generic aggravator within the law and **recommends that, for the purposes of monitoring and better understanding the prevalence of domestic abuse-motivated crime in NI, an obligation**	The aggravator would be applied from police through to court stage. Where a general aggravator applies a decision will have to be taken as to whether or not the offence is aggravated as part of the conviction process.

	should be created for all legal practitioners to record the domestic abuse aggravator throughout the investigative, pre-trial and trial process. In cases where a generic aggravator is sought and either accepted or rejected at sentencing stage, there should be an obligation on the trial judge to specify whether the aggravator is being applied and give reasons for their decision, including written published reasons in cases where it is decided that this aggravator be removed.	Where an offence (including the domestic abuse offence) is aggravated the Bill requires the court to state on conviction that the offence is aggravated, record it in a way that shows that it is aggravated, treat the fact that the offence is aggravated as a factor that increases the seriousness of the offence and, in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed. Data will be collected in relation to the domestic abuse offence and aggravators. Operationally it would be difficult, and likely prohibitively expensive, to record why an aggravator is removed. This is an issue that would be dealt with as part of the case.
Bar of NI	The Bar considers that it is **sufficient for the court to state on conviction that the offence was aggravated, record the conviction in a way that shows that the offence was aggravated and take the aggravation into account in determining the appropriate sentence under 15(4)(a), (b) and (c).** It is of the view that **the requirement under 15(4)(d) to indicate precisely how the offence affected the sentence is not necessary as it could disturb the judiciary's carefully weighted**	The Department considered carefully the obligation that should be placed on the judiciary, taking into account the independence of the judiciary and the need not to interfere with this. It is for this reason that the provisions require the judiciary to simply explain how the fact that the offence is so aggravated affected the sentence imposed. This will not affect judicial discretion and it will be for the judiciary to determine what is appropriate to be provided, as well as the sentence awarded, given the particular circumstances of the case.

	assessment as to the starting point of a sentence in any case involving domestic abuse as an aggravating factor. It will also remain important for the sentencing judge to be able to have the flexibility and discretion to depart from any guidelines based on the circumstances of an individual case and where there are justifiable reasons for doing so.	

CLAUSE 16 – WHAT AMOUNTS TO THE AGGRAVATION		
EFM Clause 16 sets out the conditions required for the domestic abuse aggravator to apply. This requires that a reasonable person would consider that the offence would be likely to cause the accused's partner or a connected person to suffer physical or psychological harm (including fear, alarm and distress). A further condition is that the accused either intended the offence to cause their partner/connected person to suffer physical or psychological harm, or was reckless as to whether or not this would be caused. Subsection (3) provides that the offence itself does not have to have been committed against the accused's partner/connected person, rather it can be against a third party with the purpose of abusing their partner or a connected person. Also harm does not have to have been caused to the partner/connected person as a result of the offence, rather that a reasonable person would consider that harm would be likely to be caused. As such, the aggravation could be in effect where, for example, the accused commits criminal damage against the friend of their partner, or a connected person, with the intent of causing psychological harm to their partner or a connected person. Subsection (4) ensures that evidence of actual harm remains relevant in the case.		
Organisation	**Comments/Issues relating to Clause 16**	**Department of Justice Comments/ Position**
Bar of NI	The Bar's comments on the reasonable person test, the definition of psychological harm and recklessness are also relevant to this section of the Bill. In addition, the Bar notes that 16(3) again gives a very broad scope to this clause by providing that the offence itself does not have to have been committed against the accused's partner/connected person as it can be committed against a third party with the purpose of abusing their partner or a connected person. Also notes the example provided in the explanatory memorandum that the aggravation could	These issues have been covered earlier in the document under the relevant clauses. The offence and associated aggravation is to ensure that justice cannot be evaded where a person makes use of another person to abuse an individual, for example through the use of children or another person to abuse them, or where abusive behaviour is directed toward another person in order to subject the individual to abuse. It is considered important that the offence can capture both direct and indirect abusive behaviour where the intention is to subject the individual to abusive

	be in effect where an accused commits criminal damage against the friend of their partner, or a connected person, with the intent of causing psychological harm to their partner or a connected person. **Beyond this the Bar is generally unclear as to the specific scenarios which it is envisaged would fall within this and requests further clarity on the necessity of 16(3) being included within the Bill.** **More broadly, for the purposes of Chapter 2 and indeed the earlier sections of the Bill the Bar considers that it might be helpful for the legislation to include a clear definition of domestic abuse. The Bar understands that the 'Stopping Domestic and Sexual Violence and Abuse Strategy' published jointly by the Department of Justice and the Department of Health in 2016 provides a non-statutory definition of Domestic Abuse as "threatening, controlling coercive behaviour, violence or abuse (psychological, virtual, physical, verbal, sexual, financial or emotional) inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form**	behaviour. The absence of this provision would mean that a person would be able to continue to subject someone to abusive behaviour where they ensured that this was not carried out directly against the individual. The Department considered, in conjunction with core statutory and voluntary sector partners, whether to include a statutory definition of domestic abuse in the Bill ahead of it being finalised. Following this it was agreed that given the detail set out in the Bill, in relation to what constitutes abusive behaviour (and therefore domestic abuse), that a standalone definition was unnecessary. Furthermore, to provide for a definition in the Bill would not materially change the provisions or serve a legislative purpose, given that any such provision would be likely to simply state domestic abuse means abusive behaviour as set out in Clause 2. In addition, as part of the operationalisation of the offence, and the development of the statutory guidance (which will be published), consideration will be given to the content of the guidance. This will include examples of what is deemed to abusive behaviour (and therefore domestic abuse) under

	of disability) by a current or former intimate partner or family member". **This would give further certainty and clarity to the circumstances in which this legislation can be appropriately used. The draft Domestic Abuse Bill currently being considered at Westminster provides a statutory definition of domestic abuse at section 1(3) which is helpful as it outlines that behaviour is abusive if it consists of any of the following: (a) physical or sexual abuse; (b) violent or threatening behaviour; (c) controlling or coercive behaviour; (d) economic abuse; (e) psychological, emotional or other abuse.**	the provisions of the Bill. The guidance will be considered by a multi-agency Task and Finish Group involving our key statutory and voluntary sector partners, as is the case with all major policies taken forward by the Department in this area, through which a range of views can be reflected. In terms of Section 1(3) of the Westminster Domestic Abuse Bill the local Domestic Abuse Bill also sets out what is deemed to be abusive behaviour (through Clause 2), covering similar areas albeit using more generic provisions. It is considered that the local Bill will cover the same aspects, albeit the terminology is not the same.

CLAUSE 17 – EXCEPTION REGARDING THE AGGRAVATION

EFM

Clause 17 provides that an offence cannot be aggravated if the partner/connected person is under 18 and the accused has parental responsibility for them. As set out at clause 11, it is considered that there are other provisions that deal with, and should more appropriately be used for, direct abuse of a child or young person by their parent or other carer.

Organisation	Comments/Issues relating to Clause 17	Department of Justice Comments/ Position
Men's Advisory Project	**Highlights the necessity for the Bill to ensure that children are recognised and protected as victims of domestic abuse where there is abuse within their family.**	The Department gave careful consideration to the scope of the domestic abuse offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member (except where parental responsibility applies, in order to prevent criminalisation of this as a domestic abuse matter) and that aggravation related to a child could be reflected while preventing criminalisation of parental responsibility. Having considered the matter further, and taking account of the concerns expressed, the Department is having discussions with colleagues in the Department of Health around a possible amendment to child protection provisions (contained in health legislation but amendment of which could be brought forward through the Domestic Abuse Bill subject to agreement) to make it explicit that where a child is ill treated, that this would also include non-physical abuse. Such provision would make clear that it would be an

		offence whether the suffering or injury caused to a child was physical or psychological in nature, for example isolation, humiliation or bullying. No other jurisdiction locally provides for criminalisation in relation to parental responsibility under domestic abuse legislation and our provisions in relation to the offence and children go further than other jurisdictions already provide for. In England and Wales the coercive control offence is available for victims under the age of 16, except where parental responsibility applies, while in Scotland and the Republic of Ireland the offence does not apply to family members.
NIHRC	Highlights that Article 3(1) UN CRC requires that the best interests of the child are a primary consideration and states that **the Department should be satisfied that in providing for this exception that the best interests of the child are a primary consideration and that it contains sufficient safeguards to ensure that this exception cannot be misused in cases of family breakdown and disputes around child contact, where the child may be used as a weapon in such cases.**	See above. When determining an application for contact with a child, the court's paramount consideration is the child's welfare and in considering the child's best interests, the court is required to consider any risk of harm to the child.
Victim Support NI	**In line with comments on Clause 11, recommends that child legislation is examined to ensure that there is legal parity for child victims of domestic abuse whose abuser is someone with parental responsibility for them and if**	See above.

	such parity does not exist this should be addressed by legislative provisions.	
Children's Law Centre	**CLC is challenged as to the rationale and justification for this clause and strongly advocates for its removal from the Bill.** See comments under clause 11.	The Department gave careful consideration to the scope of the domestic abuse offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member (except where parental responsibility applies, in order to prevent criminalisation of this as a domestic abuse matter) and that aggravation related to a child could be reflected while preventing criminalisation of parental responsibility. Having considered the matter further, and taking account of the concerns expressed, the Department is having discussions with colleagues in the Department of Health around a possible amendment to child protection provisions (contained in health legislation but amendment of which could be brought forward through the Domestic Abuse Bill subject to agreement) to make it explicit that where a child is ill treated, that this would also include non-physical abuse. Such provision would make clear that it would be an offence whether the suffering or injury caused to a child was physical or psychological in nature, for example isolation, humiliation or bullying. No other jurisdiction locally provides for criminalisation in relation to parental responsibility under domestic abuse legislation and our provisions in relation to the offence and children

		go further than other jurisdictions already provide for. In England and Wales the coercive control offence is available for victims under the age of 16, except where parental responsibility applies, while in Scotland and the Republic of Ireland the offence does not apply to family members. Where there are issues regarding safeguarding and child protection these would be addressed through other means, offences and sanctions. The Department has considered the Bill and is content that it is Human Rights Compliant.
NICCY	**Highlights its concerns regarding the exceptions set out in clauses 11 and 17 relating to where a person has parental responsibility for a child affected by the offences within the Bill and requests that consideration is given to whether there is a necessity for such exclusions.** See comments under clause 11.	The Department gave careful consideration to the scope of the domestic abuse offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member (except where parental responsibility applies, in order to prevent criminalisation of this as a domestic abuse matter) and that aggravation related to a child could be reflected while preventing criminalisation of parental responsibility. Having considered the matter further, and taking account of the concerns expressed, the Department is having discussions with colleagues in the Department of Health around a possible amendment to child protection provisions (contained in health legislation but amendment of which could be brought forward through the Domestic Abuse Bill subject to agreement) to

		make it explicit that where a child is ill treated, that this would also include non-physical abuse. Such provision would make clear that it would be an offence whether the suffering or injury caused to a child was physical or psychological in nature, for example isolation, humiliation or bullying. No other jurisdiction locally provides for criminalisation in relation to parental responsibility under domestic abuse legislation and our provisions in relation to the offence and children go further than other jurisdictions already provide for. In England and Wales the coercive control offence is available for victims under the age of 16, except where parental responsibility applies, while in Scotland and the Republic of Ireland the offence does not apply to family members. Where there are issues regarding safeguarding and child protection these would be addressed through other means, offences and sanctions.

CLAUSE 18 – MEANING OF A PERSONAL CONNECTION

EFM

This clause defines what two people are personally connected for the purposes of Chapter 2. Subsection (2) provides that two people are personally connected if they are, or have been, married or in a civil partnership or they live together (or have lived together) as if spouses of each other. Two people are also personally connected if they are or have been in an intimate personal relationship with each other or are family members. The term "intimate personal relationship" is intended to cover relationships between two individuals (including young/teenage and same-sex relationships), although the relationship need not be sexual or long-term.

Subsection (3) sets out that a family member covers a person's parent, grandparent, child, grandchild or sibling. A family member also covers the parent, grandparent, child, grandchild or sibling of the person that they are in a relevant relationship with. Subsection (4) defines that two people are in a relevant relationship if they are married or are in a civil partnership, or they live together as if spouses. Subsection (5) makes provision for the inclusion of half-blood relationships, relationships by affinity and stepchildren when considering family membership.

Organisation	Comments/Issues relating to Clause 18	Department of Justice Comments/ Position
Bar of Northern Ireland	The Bar notes that this clause brings a very wide range of personal connections within the scope of the Bill which goes beyond partners or ex-partners. It appears that much of the Bill is based almost entirely on the Scottish model under the Domestic Abuse (Scotland) Act 2018 except for this clause which instead adopts section 76 of the Serious Crime Act 2015 in England and Wales and the associated list of relatives contained within section 63(1) of the Family Law Act 1996. In effect this	Locally the scope of the domestic abuse offence in wider than Scotland given that we cover both partners/formers partners etc. as well as family members. This is to reflect the scope in the cross Departmental seven year domestic and sexual violence and abuse strategy. To do otherwise would be contrary to the position adopted in that Executive strategy. This also reflects the current police position whereby family members are deemed to include mother, father, brother, sister, son, daughter, grandparents, in-laws or stepfamily.

	Bill takes what constitutes abusive behaviour under the Scottish legislation and the low level of psychological harm required for an offence restricted only to partners and ex-partners and merges it with the wide ambit of the English legislation for a whole range of family members. While the Bar can understand the rationale behind the inclusion of this on the basis of a desire to ultimately offer protection to a wide range of family members alongside the recognition that family dynamics are often diverse. **However, in terms of the practical operation of this clause there is a risk that a very broad spectrum of scenarios involving family disagreements could be unintentionally criminalised given that the Bill is not restricted to partners and ex-partners. The Bar queries whether the criminal law is the most appropriate way in which to deal with these extended family relationships and if this could be better addressed in other ways, such as through public education.**	In considering the scope of family members the Department was keen to ensure that the range was comprehensive but not so broad, covering all possible family members, that it would negatively and adversely impact upon what society and the courts consider to be domestic abuse, in the context of committing an offence and the seriousness associated with this. To include virtually any extended family member could negatively impact of what is considered to be domestic abuse, given the very serious charges that may be associated with this. The Bill does not replicate section 76 of the Serious Crime Act, which would encapsulate a much wider range of family members including generally further removed family members such as cousins. The offence is not intended to criminalise normal friction that may occur within a relationship or family. The crux of the offence is that there has been criminally abusive behaviour which meets the conditions set out in the Bill, which operates on the basis of a number of checks and balances. The behaviour must in the first instance occur on two or more occasions, be considered abusive (with a range of effects set out), would be considered by a reasonable person to be such, would be likely to cause the person to suffer physical or psychological harm and the offender intends to cause harm or is reckless as to this. All

	Suggests consideration could be given to whether the offence should instead be defined more tightly to include partners, ex-partners and being aggravated where offending involves children (as per clauses 8 and 9).	of these conditions have to occur for the offence to be carried out. See comments above in relation to the scope of the offence.

There were no issues raised in relation to Clause 19

CLAUSE 20 – HOW NOTICE IS TO BE SERVED		
EFM This clause repeats the provision at clause 7 for the purpose of the aggravator. This provides for the service of notices where a relationship is challenged under clause 19. It sets out the process to be applied and the meaning of key terms and their application.		
Organisation	**Comments/Issues relating to Clause 20**	**Department of Justice Comments/ Position**
Women's Aid Federation	Takes issue in relation to Clause 20(C) with **sending the notice by post to the person at the person's proper address. This has been a major issue for many years and is not secure and safe for the victim and survivor to know if the notice has been served. How is this proved as service?**	We understand that the concern around the service of notices relates to current provisions relating to protection orders etc. and notification of this to victims. The provisions in the Bill around the service of new notices related to those circumstances where the personal relationship between two individuals is being challenged and for the service of notices, primarily between legal representatives. It is considered that this standard form of service should not prove problematic in this regard.

CLAUSE 21 – NO RIGHT TO CLAIM BY JURY		
EFM This clause amends Article 29(1) of the Magistrates' Courts (Northern Ireland) Order 1981, the effect of which is to prohibit those accused of the domestic abuse offence before a magistrates' court from the right to elect for trial by jury at Crown Court. This currently covers offences such as intimidation, making or possessing petrol bombs, possession of offensive weapon with intent to commit an offence as well as unnecessary suffering and fighting in relation to the welfare of animals.		
Organisation	**Comments/Issues relating to Clause 21**	**Department of Justice Comments/ Position**
NIHRC	**The Commission advises that, in line with Article 6 ECHR and Article 14 UN ICCPR, clause 21 should only be utilised in exceptional circumstances and recommends that it is amended to reflect this by referencing necessity and proportionality, with the legitimate aim of protecting the victim, as guiding principles for when this clause can be utilised.**	The purpose of this clause is to ensure that the criminal justice system is not use to further abuse individuals through electing for trial at Crown Court (which will be even more arduous for victims over magistrates' court), given the abusive nature of the underpinning offence, where both court tiers may otherwise be available. This type of provision currently applies for a range of other offences such as intimidation, making or possessing petrol bombs, possession of offensive weapon with intent to commit an offence as well as unnecessary suffering and fighting in relation to the welfare of animals. This does not prevent a case being tried at Crown Court where it is considered that the offence is serious enough to be tried on indictment.
Evangelical Alliance	**Requests clarification of the rationale behind this clause and questions if it is because prosecutions for domestic**	The purpose of this clause is to ensure that the criminal justice system is not use to further abuse individuals through electing for trial at Crown Court (which will be even more arduous

	violence are difficult to achieve with a jury. While wanting to advocate strongly for measures that would help to increase conviction rates for crimes involving domestic violence, states that it seems unusual not to have the option of a jury trial in what remains a serious criminal charge with a huge social stigma, with the only other example they can think of is the use of Diplock courts in Northern Ireland in relation to terrorism which has been controversial in terms of human rights since their introduction. **While wanting to protect the victim from the ordeal of trial as much as possible and increase conviction rates for these crimes maintaining both actual and perceived access to justice and fairness is important for everyone in wider society.**	for victims over magistrates' court), given the abusive nature of the underpinning offence, where both court tiers may otherwise be available. This type of provision currently applies for a range of other offences such as intimidation, making or possessing petrol bombs, possession of offensive weapon with intent to commit an offence as well as unnecessary suffering and fighting in relation to the welfare of animals. This does not prevent a case being tried at Crown Court where it is considered that the offence is serious enough to be tried on indictment.

CLAUSE 22 – SPECIAL MEASURES DIRECTIONS

EFM

This clause amends Part 2 of the Criminal Evidence (Northern Ireland) Order 1999.
Subsection (2) amends Article 5(4) (witnesses eligible for assistance on grounds of fear or distress about testifying) of the 1999 Order to ensure that the complainant of a domestic abuse offence, as well as any other offence (for example, criminal damage, assault, grievous bodily harm, threats to damage property or threats to kill, etc.) where there is a specification that it is aggravated by reason of involving domestic abuse, is eligible for assistance, such as the use of live links or screens at court, in relation to those proceedings, unless they have informed the court that they do not wish to be eligible for such assistance.
Subsection (3) amends Article 13(4)(a) of the 1999 Order (evidence given in private) to ensure that where proceedings relate to a domestic abuse offence, or any other offence where there is a specification that it is aggravated by reason of involving domestic abuse, a special measures direction may provide for the exclusion of persons from court when the witness is giving evidence.
This clause is tied to Clause 24 which sets out the meaning of an offence involving domestic abuse.

Organisation	Comments/Issues relating to Clause 22	Department of Justice Comments/ Position
Women's Aid Federation	Welcomes the provision to provide automatic eligibility for special measures in domestic violence and abuse cases in the criminal cases. **Highlights that this problem is most acute within the family court where access to special measures is so poor that survivors are being attacked, abused, harassed and left too frightened to effectively advocate for the ongoing safety of their child. States that there needs to be a guarantee of special measures for victims and survivors of**	In terms of criminal courts the granting of special measures is not assured until the point that a judge decides that they are to be granted (there may of course separately be operational issue on the day). While the new provisions provide that a victim of domestic abuse will automatically be eligible for consideration for special measures, final decisions will continue to remain with the judiciary. In terms of special measures at family court some special measures can be directed by a court hearing family proceedings on a case-by-case basis, such as the screening of witnesses

	domestic violence and abuse in the family courts – failure to ensure parity in the court systems will leave survivors at continued risk of harm and an inconsistent approach to safety between the courts. There are many examples where special measures have been assured but on the day of court they are unavailable.	in court or an intermediary to facilitate communication, while court rules include provision for the giving of evidence by video link. However, the Department is considering amending the Bill to require court rules to enable a court hearing family proceedings to make a special measures direction in relation to a party or witness who is a victim of domestic abuse and requiring a court to assume their vulnerability, so that the court will be required to consider whether it is necessary to make a direction. The Department is also considering an amendment to the Bill to require court rules to enable a court hearing civil proceedings to make a special measures direction in relation to a witness who is a victim of certain offences (which would be specified in secondary legislation) where the court is satisfied that their vulnerability is likely to diminish the quality of their evidence or otherwise affect their participation in the proceedings. As the making of court rules is a matter for the statutory rules committees chaired by the judiciary, the Minister has written to the Lord Chief Justice to seek his views.
Women's Regional Consortium	The Consortium states that **victims must be made aware that they can avail of special measures when going to court and this information should be delivered consistently by an agency of the criminal**	It is envisaged that the new provisions, which provide that a victim of domestic abuse will automatically be eligible for consideration for special measures, should reduce this occurring. Work will also be undertaken with criminal justice

	justice system rather than women hearing about special measures for the first time from Women's Aid. The Consortium also states that **it is not just about providing information but also ensuring that the special measures are actually put in place when requested by a witness as many women arrive at court to find that the special measures they were promised have not been made available.**	agencies to ensure that there is increased awareness of this. In terms of criminal courts the granting of special measures is not assured until the point that a judge decides that they are to be granted (there may of course separately be operational issues on the day). While the new provisions provide that a victim of domestic abuse will automatically be eligible for consideration for special measures, final decisions will continue to remain with the judiciary.
Men's Advisory Project	MAP is of the view that **complainants under this law should be eligible for special measures as a matter of course and this should also apply in cases where domestic abuse is an aggravator for a generic offence.** **MAP also recommends that special measures are introduced in all family and civil cases where someone has been alleged to be a victim of domestic abuse. However, the wish to protect victims should not prevent an accused from being able to mount a robust defence and there must be equality of arms within the court with regard to legal representation and anything a complainant relies upon**	Provision is made in the Bill, in relation to both the domestic abuse offence and aggravated offences (that is any other offence that involves domestic abuse) that a victim will automatically be eligible for consideration of special measures. Final decisions on the granting of special measures are a matter for the judiciary. In terms of special measures at family court some special measures can be directed by a court hearing family proceedings on a case-by-case basis, such as the screening of witnesses in court or an intermediary to facilitate communication, while court rules include provision for the giving of evidence by video link. However, the Department is considering amending the Bill to require court rules to enable a court hearing family proceedings to make a special measures direction in relation to a party

	in court may be used in cross examination to ascertain clarity or facts.	or witness who is a victim of domestic abuse and requiring a court to assume their vulnerability, so that the court will be required to consider whether it is necessary to make a direction. The Department is also considering an amendment to the Bill to require court rules to enable a court hearing civil proceedings to make a special measures direction in relation to a witness who is a victim of certain offences (which would be specified in secondary legislation) where the court is satisfied that their vulnerability is likely to diminish the quality of their evidence or otherwise affect their participation in the proceedings. As the making of court rules is a matter for the statutory rules committees chaired by the judiciary, the Minister has written to the Lord Chief Justice to seek his views.
Victim Support NI	**Victim Support also strongly recommends that special measures are introduced in all family and civil cases where someone has been shown to be a victim of domestic abuse and the other party to proceedings is their abuser.** Is of the view that the issue of extending special measures to civil and family courts invokes the same arguments, the same safety concerns and the same logic as ending cross-examination of domestic abuse	See above.

	victims and **that it is in the public interest for these issues to be dealt with together in the interests of economic efficiency and victim wellbeing. Recommends that an amendment to provide for this is made to the Bill.**	
NICCY	**In relation to special measures directions, NICCY has called for the Barnahus approach, which was established in Iceland, to support child victims of sexual offences and operates in a wide number of countries, to be implemented in Northern Ireland for children who are subject to sexual abuse. NICCY notes that once established this could be extended to support child victims and witnesses of domestic abuse as occurs in a number of other jurisdictions.** Barnahus seeks to ensure a child centred response to victims of abuse by providing child protection, medical, therapeutic and justice processes within a single child friendly location which supports children to give their best quality evidence while minimising the need for multiple interviews and mitigating against delays in procedures.	The Department of Justice has completed an initial scoping study of the Barnahus (Children's House) model. The Department will also establish a Working Group by August 2020, in partnership with other criminal justice organisations and the voluntary sector, to consider how we can work together to deliver similar benefits to child victims of sexual abuse as those delivered through the Barnahus model with the aim of preventing re-traumatisation or re-victimisation of the child during their journey through the criminal justice system.
NIHRC	NIHRC welcomes the provision that victims will automatically be eligible for consideration of special measures when giving evidence as provided for in clause 22.	The use of special measures will be considered as part of the needs assessment process for victims and witnesses going through the criminal justice system, taking account of their individual circumstances. This is intended to ensure that their needs are identified and appropriate steps

	The Commission recommends that the principle of reasonable accommodation is inserted into clause 22 and implemented in consultation with the individual victim, when determining what special measures are appropriate in each case.	taken to respond to these (with decisions on the granting of special measures taken by the judge) Article 5(3) of the Criminal Evidence (Northern Ireland) Order 1999 also provides that in relation to the use of special measures, and determining whether a witness is eligible, that the court must consider any views expressed by the witness (including victim).

There were no issues raised in relation to Clauses 23 and 24

CLAUSE 25 – GUIDANCE ABOUT DOMESTIC ABUSE

EFM

This clause provides that the Department of Justice in Northern Ireland may issue guidance about Part 1 of the Bill (that is the domestic abuse offence and aggravation) or any other matters as to criminal law or procedure relating to domestic abuse in Northern Ireland, to whoever it considers appropriate. The Department may also revise guidance and must publish the guidance or any revisions to it. A person exercising public functions to whom the guidance relates must have regard to it in the exercise of those functions.

Organisation	Comments/Issues relating to Clause 25	Department of Justice Comments/ Position
Women's Aid Federation **Men's Advisory Project** **Women's Policy Group** **Women's Regional Consortium NI** **NIWEP**	All these organisations have requested **clarity in relation to this guidance and assurances that both voluntary sector organisations and statutory partners will be involved in the drafting of the guidance.**	As part of the operationalisation of the offence, and the development of the statutory guidance (which will be published), consideration will be given to its content and will include examples of abusive behaviour. This will be considered by a multi-agency Task and Finish Group involving our key statutory and voluntary sector partners, as is the case with all major policies taken forward by the Department in this area, through which a range of views can be reflected.
NICCOSA	**Would welcome the opportunity to consider any rules or guidance issued before the legislation is enacted.**	See above.
PSNI	**Highlights that from an operational perspective the PSNI will rely on accompanying statutory guidance.** Guidelines will greatly assist the PSNI if they provide clarity in the definition and examples of offences, which will be the foundation used to shape officer training which in turn	See above. PSNI will be critical to the development of the guidance, including input from officers on the ground.

	will be pivotal for successful enforcement of the legislation.	
Victim Support NI	**Recommends that statutory guidance will be necessary to underpin and address the added complexities and intentions of the legislation. Such guidance would also serve as a particularly useful training tool. It is important that such guidance is drafted with input from expert domestic abuse practitioners.**	See above.
NIACRO	**Statutory guidance that sets forth types of evidence that investigators and prosecutors can use to prove domestic abuse has occurred will be needed as coercion and emotional abuse are historically difficult to prosecute when reduced to "he said/she said" stalemate arguments.**	See above. The Public Prosecution Service will also develop guidance for prosecutors.
The Bar of NI	States that it will be necessary for the **Department to publish guidance on the law and procedure relating to domestic abuse and notes that further guidance and training will be important for a wide range of criminal justice professionals in order to ensure an effective justice system response following the reporting of an offence.**	See above. The Department also recognises the importance of training and awareness raising, including making use of the guidance. A multi-agency Task and Finish Group will consider how best this can be progressed. This will include both statutory as well as voluntary and community sector partners.

CLAUSE 26 – PROHIBITION OF CROSS-EXAMINATION IN PERSON

EFM

Clause 26 inserts the following new Articles into the Family Law (Northern Ireland) Order 1993 to prohibit perpetrators of abuse from cross-examining their victims in person in certain circumstances in family proceedings, and vice versa, and give courts discretion to prohibit cross-examination in person in other circumstances where it would affect the quality of the witness's evidence or cause them significant distress. It also imposes a duty on courts to appoint a qualified legal representative to conduct cross-examination on a party's behalf, where that party is prohibited from cross-examining in person, there is no satisfactory alternative means available for the witness to be cross-examined or the evidence to be obtained, and it appears that no other qualified legal representative is to act for the person.

New Article 11A defines the meaning of 'family proceedings' and 'witness' for the purpose of the inserted Articles, and provides that the Department of Justice may by regulations alter the former definition.

New Article 11B provides that, in family proceedings, no party to the proceedings who has been convicted of, or given a caution for, or is charged with, a specified offence may cross-examine in person the (alleged) victim of that offence. It also provides that the (alleged) victim may not cross-examine in person the (alleged) perpetrator. The prohibition will not apply to spent convictions, unless evidence in relation to the conviction is admissible in, or may be required in, the proceedings under Article 8(2), (3) or (4) of the Rehabilitation of Offenders (Northern Ireland) Order 1978. If cross-examination takes place in breach of this automatic prohibition, the validity of a decision of the court is not affected if the court was not aware of the conviction, caution or charge when the cross-examination took place.

New Article 11B(5) defines the meaning of 'caution' and 'conviction' and provides that a 'specified offence' is one specified in regulations made by the Department of Justice. New Article 11B(6) makes clear that the prohibition applies even where a conviction has been discharged (either absolutely or conditionally). New Article 11B(7) defines 'offence' and "provision" for the purposes of the Article.

New Article 11C provides that, in family proceedings, no party to the proceedings against whom an 'on-notice protective injunction' is in force may cross-examine in person a witness who is protected by the injunction. It also provides that a party who is protected by such an injunction may not cross-examine in person a witness against whom the injunction is in force. If cross-

examination takes place in breach of this provision, the validity of a decision of the court is not affected if the court was not aware of the protective injunction when the cross-examination took place.

New Article 11C(4) and (5) provide that a 'protective injunction' is one specified in regulations made by the Department of Justice; and that a protective injunction is 'on-notice' in one of two instances: if the court is satisfied that there has been a hearing at which the person against whom the injunction is in force has had a chance to ask for it to be set aside or varied; or if the injunction was made at a hearing and the court is satisfied that both the person protected by it and against whom it is in force, had been informed about the hearing.

New Article 11D provides that, in family proceedings, where specified evidence is adduced that a party to the proceedings has been abusive towards a witness to whom that party is personally connected, that party may not cross-examine the witness in person. It also provides that, where specified evidence is adduced that a witness has been abusive towards a party to the proceedings, to whom the witness is personally connected, that party may not cross-examine the witness in person.

New Article 11D(3) and (4) provides that 'specified evidence' is evidence specified, or of a description specified, in regulations by the Department of Justice. New Article 11D(5) provides that the meaning of 'abusive behaviour' and 'personal connection', provided for in clauses 2, 4 and 5 of this Bill, applies to this Article.

New Article 11E provides that, in family proceedings, in addition to the absolute prohibition on cross-examination in person under new Articles 11B–11D, a court has discretion to prohibit cross-examination in person by giving a direction to that effect. Such a direction can be given if it appears to the court that either the 'quality condition' or the 'significant distress condition' is met and it would not be contrary to the interests of justice to give the direction. The 'quality condition' is met if the quality of evidence given by the witness is likely to be diminished if the cross-examination is conducted by the party in person and is likely to be improved if a direction is given. The 'significant distress condition' is met if cross-examination in person is likely to cause significant distress to the witness or the party, and that distress is likely to be more significant than would be the case if the witness were cross-examined by a person other than the party. A direction under this provision can be made on an application by a party to the proceedings or of the court's own motion.

New Article 11E(5) sets out factors that the court must consider when deciding whether or not the 'quality condition' or 'significant distress condition' is met. This covers views expressed by the witness or the party; the nature of the questions likely to be asked; any finding of fact that has been made about the party's or witness's behaviour; how the party or witness is acting; and any relationship between the witness and the party. The list is not exhaustive.

New Article 11E(6) and (7) define what is meant by the quality of a witness's evidence.

New Article 11F provides more detail in relation to directions made under new Article 11E. This covers how long a direction may last and the circumstances in which a court may revoke a direction. The court is required to state its reasons for giving, refusing, revoking, or refusing to revoke a direction.

New Article 11G provides for alternatives to cross-examination in person where a party to family proceedings is prohibited from doing so. First, the court must consider if there is a satisfactory alternative means for the witness to be cross-examined, or of obtaining evidence that the witness might have given under cross-examination. If not, the court must invite the party to arrange, within a specified time, for a qualified legal representative to cross-examine the witness on the party's behalf, and to notify the court of the arrangements. If the party does not make such an arrangement within the specified time or the court has not received any notification of such an arrangement, the court must consider if it necessary in the interests of justice, to appoint a qualified legal representative to cross-examine the witness in the interests of the party. A qualified legal representative appointed by the court is not responsible to the party other than acting in the interests of the party in accordance with the provision. New Article 11G(8) explains what is meant by 'cross-examination' and 'qualified legal representative'.

New Article 11H requires the Department of Justice to pay the fees, costs and expenses properly incurred by a qualified legal representative appointed under new Article 11G, and that the Department may specify in regulations the sums or rates payable.

New Article 11I provides that the Department of Justice may issue, and subsequently revise, guidance about the role of a qualified legal representative appointed under new Article 11G. It also requires the qualified legal representative to have regard to such guidance and for the Department to publish the guidance and any revisions to it.
New Article 11J provides that regulations under new Articles 11A–11I are subject to negative resolution other than regulations under new Article 11A(2) to amend the definition of 'family proceedings', a draft of which must be laid before and approved by the Assembly.

Organisation	**Comments/Issues relating to Clause 26**	**Department of Justice Comments/ Position**
NIHRC	The Commission welcomes Clause 26. It highlights that some recommendations from the Gillen Review may also be relevant to court proceedings in domestic abuse cases and **continues to call on**	The Department together with partners have been working to develop a phased implementation plan to give effect to the 253 recommendations contained in Sir John Gillen's Review into the law and procedures in serious sexual offences in

	the Department to progress implementation of the Gillen Report Recommendations. **The Commission also recommends that the Department considers facilitating, where necessary, pre-recorded cross-examination outside court settings for vulnerable individuals and includes provision for this within clause 26.**	Northern Ireland. The Implementation Plan was published on 9 July 2020 and is available at www.justice-ni.gov.uk/publications/gillen-review-implementation-plan. This plan sets out a range of areas where work is being taking forward to address the concerns raised in Sir John's Review. Work has commenced in relation to establishing Remote Evidence Centres in Northern Ireland on a phased basis. Inclusion of appropriate live link facilities that can accommodate the introduction of pre-recorded cross examination is being considered as part of this work. Legislative provision is already in place for both pre-recorded cross examination and evidence by live link in the Criminal Evidence (Northern Ireland) Order 1999. Work is underway in relation to how best pre-recorded cross examination can be piloted, likely to involve sexual offence cases for those under the age of 13 in the first instance.
Women's Aid Federation	Delighted that the Bill includes a ban on cross-examination however the prohibition will only apply where there is a criminal conviction or court order in place and, in other cases, will rely on judicial discretion. Given the current low reporting to police of domestic violence and abuse this is concerning and something that needs to be considered. **Recommends that prohibition should be extended to direct cross-**	The absolute prohibition on cross-examination in person will not only apply where there is a criminal

	examination in any family proceedings in which allegations of domestic violence or abuse are being determined, or where either party has admitted or found to have perpetrated domestic violence and abuse to assure safety in relation to cross examination. **Notes that the prohibition will not apply to spent convictions**. The rehabilitation period (the amount of time that must pass between conviction/disposal before an offence becomes spent) depends on the method of disposal. If a defendant gets probation (which is often the case) then the rehabilitation period can be as little as 1 year which is concerning. In relation to 11D of the insert to the Family Law (Northern Ireland) Order 1993 it prohibits cross examination between persons involved in abusive behaviour. **What this means is unclear as it states that the "specified evidence" adduced to prove the behaviour will be set out in regulations made by the Department of Justice. Cross-examination should be prohibited in cases where there is a domestic violence history whether reported to the authorities or not and Women's Aid wants to know what the**	conviction or court order in place but also where there is other evidence of domestic abuse, to be specified in regulations made by the Department (New Article 11D to be inserted in the 1993 Order refers). It is anticipated that the types of evidence to be specified would need to be sufficiently objective and robust to justify an absolute bar, whilst at the same time protecting as many victims as possible. The Department intends to consult on the other types of evidence of domestic abuse which should lead to an absolute prohibition before making regulations under this provision. The provision in the Bill is intended to be consistent with existing provision in the Rehabilitation of Offenders (Northern Ireland) Order 1978 in relation to when evidence of spent convictions can be placed before a court. Under the 1978 Order, spent convictions are admissible in proceedings in relation to children, including an application for a residence or contact order under the Children (Northern Ireland) Order 1995. Where an absolute prohibition does not apply, the court has a discretionary power to prohibit cross-examination in person. The types of evidence of domestic abuse (in addition to a relevant conviction, charge, caution or protective injunction), which will lead to an absolute prohibition, will be specified in regulations. The regulations will not be drafted until the Bill becomes legislation.

	Regulations will be and whether they have been drafted.	The Department intends to consult on the types of evidence which should lead to an absolute prohibition before making any regulations under this power. However, the types of evidence that might be specified include, for example, a letter from a health professional or from an organisation providing support services to victims of domestic abuse.
Men's Advisory Project	Supports the proposed changes. Understands that Regulations will be brought forward regarding 'specified evidence' and **states that should not be based on situations where men are currently discriminated against or inappropriately represented or supported e.g. evidence of abuse via the presence of a MARAC case** – as MAP are not funded to represent men at MARAC often men who face significant abuse do not have an opportunity to avail of this service. MAP also highlights that **some victims of domestic abuse are knowingly wrongly accused of abuse by the complainant and this can cause them to feel overwhelmed due to the unfairness of a system which is further abusing them. In this case legal representation should be provided to ensure that there is parity of arms and in the interests of justice.**	As noted above, it is intended that the types of evidence to be specified in regulations, which would trigger an automatic prohibition on cross-examination in person, will be consulted on before any regulations are made. The Department recognises that the protection of victims needs to be balanced with the need to ensure fairness in the proceedings for all parties. It is anticipated that the types of evidence specified in regulations would need to be sufficiently objective and robust to justify an absolute bar, whilst at the same time protecting as many victims as possible.

Belfast Area DSVP **NIPSA** **ICTU**	All these organisations welcome the prohibiting of cross examination by the alleged perpetrator and recognise that many perpetrators try to use family and criminal proceedings to further abuse their victims – often dragging out divorce proceedings, child contact etc. **They want to see the prohibition extended to direct cross-examination in any family proceeding in which allegations of domestic abuse are being determined or where domestic abuse has been admitted and/or found.**	The provision in relation to the prohibition of cross-examination in person in clause 26 will apply in all family proceedings. An automatic prohibition on cross-examination in person will apply where a party has been convicted of, given a caution for, or is charged with a relevant offence, or has had a relevant protective injunction made against them. It will also apply where there is other evidence of domestic abuse, to be specified in regulations. The other types of evidence which will lead to an automatic prohibition will be specified in regulations and the Department intends to consult before making any regulations under this power. In cases where an automatic prohibition does not apply, the court will have a discretionary power to prohibit cross-examination in person. Taken together this provision will ensure that as many victims as possible are protected from being cross-examined by perpetrators in person.
Women's Policy Group NI	Welcomes this provision to ban cross examination of victims by unrepresented perpetrators in court. States that this practice has allowed the continued control	

	and abuse of victims, diminished their ability to give evidence and retraumatised them for too long.	
	Is concerned that this ban will only apply where there is a criminal conviction or court order in place and will be subject to the judge's discretion. Suggests that this is where training across the whole CJS, including judges, is necessary to ensure that they are acutely aware of how domestic abuse presents and how perpetrators use court systems to their advantage and calls for the extension of the ban on cross examination to any proceedings in family court where allegations of domestic abuse are being considered or where the party has been found to have perpetrated or admitted to perpetrating domestic abuse.	The automatic prohibition on cross-examination in person will apply more widely than where there is a relevant conviction, caution, charge or on-notice protective injunction. It will also apply where there is other evidence of domestic abuse, which types of evidence will be specified in regulations to be made by the Department.
	Also notes that a person convicted, cautioned or charged with an offence may not cross-examine victims in person. Is deeply concerned that this will not apply to spent convictions considering the reoffending patterns of perpetrators of domestic abuse, and the rate of under-reporting associated with this crime.	The provision in the Bill is consistent with existing provision in the Rehabilitation of Offenders (Northern Ireland) Order 1978 in relation to when evidence of spent convictions can be placed before a court. Under the 1978 Order, spent convictions are admissible in proceedings in relation to children, including an application for a residence or contact order under the Children (Northern Ireland) Order 1995.

Bar of NI	The Bar welcomed the decision taken by the Department of Justice in Northern Ireland not to follow England and Wales and there continues to be funding for legal representation for applicants and respondents in private family law cases including non-molestation/occupation applications. However, it is means tested and not all applicants or respondents qualify whilst others choose to act as litigants in person regardless of funding. This has led to very difficult experiences in the family courts for victims of domestic abuse and badly presented cases by some litigants in person. The Bar welcomes the intention behind this part of the bill which is to stop the practice of persons cross-examining victims of domestic abuse and using the court system to perpetuate further abuse. However, it notes that the Department has adopted the criteria for barring cross-examination in cases with domestic abuse from the Westminster Bill which specifically used England's legal aid criteria for when there will be an automatic bar to cross-examination by a litigant in person and when it is a matter of discretion for the trial judge.	

	This Bill prohibits cross-examination in person of complainants in proceedings involving domestic abuse in the criminal court when the person is charged with the offence as per clause 23 **but the same automatic bar is not afforded to the family court. The criteria used in the family court is the same evidence required for legal aid in England and Wales which is very restrictive. The Bar believes that this defeats the purpose that the legislation sets out to achieve by not appreciating that many acts of domestic abuse, violence and coercive control are not reported to the PSNI and are not prosecuted through the criminal courts for many reasons. In the family court when children are involved, there is the principle of no delay and therefore many family cases proceed to hearing before the outcome of criminal proceedings therefore the victim in both proceedings automatically gets protection from cross-examination in person in the criminal court but has to make an application to the family judge to exercise their discretion in the family court if no criminal proceedings have taken place. The Bar fails to see the rationale for the difference in treatment between the courts when the purpose**	Clause 26 does provide for an automatic prohibition on cross-examination in person where a party has been charged with (or convicted of, or cautioned for) a relevant offence – see new Article 11B to be inserted in the Family Law (Northern Ireland) Order 1993. Clause 26 also provides for the automatic prohibition to apply where there is other evidence of domestic abuse to be specified in regulations made by the Department. The Department intends to consult on the types of evidence of domestic abuse that should trigger the automatic prohibition before making any regulations. The Department considers that the protection of victims needs to be balanced with the need to ensure fairness in the proceedings for all parties. It is anticipated that the types of evidence to be specified in regulations need to be sufficiently objective and robust to justify an absolute bar, whilst at the same time protecting as many victims as possible. The court's discretion to prohibit cross-examination in person will apply in cases where an absolute prohibition does not apply.

	of this part of the Bill is to protect Article 6 rights to a fair hearing of both complainant and defendant as well as ensuring the victim is not subjected to further abuse. **The Bar believes that there should be an automatic bar once an allegation of domestic abuse has been made in all family proceedings.** **Recommends that consideration is given to a statutory scheme of special measures for vulnerable witnesses to support them in giving evidence in the family courts which does not presently exist unlike in the criminal courts. Judges and legal practitioners are already trying to address this as much as possible by improvising with the facilities already available in the family courts. Whilst the content of the Bill around the prohibition of cross-examination is welcome, it is unfortunate that it does not include proposals for special measures in the family courts. This is a matter which the Bar raised in response to the consultation exercise in September 2019 but it has not been addressed to date.**	The Department is considering an amendment to the Bill to make provision requiring court rules to enable a court to make a special measures direction in family proceedings in relation to a party or witness who is a victim of domestic abuse and to assume their vulnerability, so that the court will be required to consider whether it is necessary to make a special measures direction. As noted at clause 22 above, the Minister has written to the Lord Chief Justice to seek his views.

	Article 11C – The Bar states that it is **unclear as to what an 'on-notice protective injunction' means and if it means an inter partes non-molestation order or county court injunction then this should be clarified.** Agrees that Article 11C will be an important provision given that it will ensure that, in family proceedings, no party to the proceedings against whom an 'on-notice protective injunction' is in force may cross-examine in person a witness who is protected by the injunction. **Indicates that it is also important that it provides that a party who is protected by such an injunction may not cross-examine in person a witness against whom the injunction is in force.** Notes that Article 11C(4) and (5) provide that a 'protective injunction' will be one specified in regulations made by the Department of Justice and would **welcome consideration being given to the bar to cross-examination in person being extended to those who have obtained an ex-parte non-molestation order and are about to contest the inter partes application.**	New Article 11C(4), to be inserted in the 1993 Order, provides that the types of protective injunction which will trigger an automatic prohibition will be specified in regulations. These would include a non-molestation order or a protection from harassment order, provided the party who is subject to the order was given notice of the application and had the opportunity to contest it. New Article 11C(5) to be inserted in the 1993 Order defines what is meant by an "on-notice" protective injunction. This is where the court is satisfied that there has been a hearing at which the person against whom the injunction was made has had a chance to ask for it to be set aside or varied; or if the injunction was made at a hearing and the court is satisfied that both the person protected by it and against whom it is in force had been informed about the hearing. New Article 11C(2) to be inserted in the 1993 Order already provides that a party to the proceedings, who is protected by an on-notice protective injunction, may not cross-examine in person a witness against whom the injunction is in force. Where an application for a non-molestation order is being contested (whether or not this follows the making of an ex parte order), one of the other grounds for an automatic prohibition on cross-examination in person may apply. Alternatively, a party may apply to the court for a direction to

		prevent cross-examination in person or the court may make such a direction of its own motion.
	Article 11D – The Bar notes that **it will be necessary for the Department to describe 'specified evidence' in further detail in Regulations.**	The Department intends to consult before making any regulations under this power.
	Article 11G - Welcomes Article 11G which gives the court the ability to 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, if there is no other satisfactory alternative.	
	However, would **highlight that the Bill does not fully recognise the marked increase in the number of personal litigants in the family courts and the impact that of this. There has been a growing concern amongst family barristers for some time that some litigants have chosen to act as personal litigants because they have realised that they can exploit their Article 6 rights within the court system and continue to act in a controlling and manipulative manner against their former partner whilst representing themselves. These litigants fail to**	Northern Ireland Courts and Tribunals Service has produced guidance to assist personal litigants in court. It is for the court hearing the proceedings to address any unacceptable behaviour by a personal litigant. As is the case in criminal proceedings, the role of a legal representative appointed by the court is limited to carrying out cross-examination on behalf of a person prohibited from doing so in person. The provisions are intended to prevent an abuser from using cross-examination to perpetuate the abuse.

	comply with acceptable standards of behaviour which damages the family justice system and often has a significant impact on the other parties to the proceedings. We would query whether it might be difficult for a legal representative to be instructed solely to conduct the cross-examination in isolation and therefore they may need to be involved throughout the case, depending on the particular circumstances.	The Department intends to issue guidance on the role of a legal representative appointed by the court and will engage with the legal profession when drafting the guidance. A legal representative appointed to carry out cross-examination is not acting for the party as a privately instructed lawyer, rather is appointed by the court and will be responsible to the party only for cross-examining the witness and not more generally as in a normal lawyer-client relationship.
	More broadly, **in the interests of justice consideration should be given not only to cross-examination which forms part of this Bill but also examination-in-chief, for example, where an allegedly abusive party calls the child of the relationship to give evidence in their favour.**	The provisions are intended to prevent an abuser from using cross-examination (when they are challenging the case against them rather than presenting their own case) to perpetuate the abuse. While, the Department understands that it is relatively rare for a child to give evidence as a witness of fact in family proceedings, there are other ways in which a court can protect a vulnerable witness.
	Article 11I - **It will be essential that the Department issues more detailed guidance for legal representatives appointed under Article 11G in connection with the role that they should play in family proceedings as per Article 11I.**	New Article 11I to be inserted in the 1993 Order, provides for the Department to issue guidance on the role of a court-appointed legal representative, which they must have regard to. The Department will engage with the legal profession when drafting the guidance.

There were no issues raised in relation to Clauses 27 and 28