

Domestic Abuse and Family Proceedings Bill

[AS INTRODUCED]

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BILL

TO

Create a course of conduct offence and a sentencing aggravation concerning domestic abuse and make rules as to procedure and giving evidence in criminal cases involving domestic abuse; and prevent cross-examination in person of certain witnesses in particular circumstances in family proceedings in the civil courts.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

DOMESTIC ABUSE: OFFENCE AND AGGRAVATION

CHAPTER 1

OFFENCE OF DOMESTIC ABUSE

5

Course of abusive behaviour

The domestic abuse offence

1.—(1) A person (“A”) commits an offence if—

- (a) A engages in a course of behaviour that is abusive of another person (“B”),
- (b) A and B are personally connected to each other at the time, and
- 10 (c) both of the further conditions are met.

(2) The further conditions are—

- (a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm, and
- (b) that A—
 - 15 (i) intends the course of behaviour to cause B to suffer physical or psychological harm, or

(ii) is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

(3) The references in this section to psychological harm include fear, alarm and distress.

5 (4) The offence under this section is to be known as the domestic abuse offence.

What amounts to abusive behaviour

2.—(1) This section contains provision for determining for the purposes of this Chapter when behaviour of a person (“A”) is abusive of another person (“B”).

(2) Behaviour that is abusive of B includes (in particular)—

- 10 (a) behaviour directed at B that is violent,
(b) behaviour directed at B that is threatening,
(c) behaviour directed at B, at a child of B or at someone else that—
(i) has as its purpose (or among its purposes) one or more of the relevant effects, or
15 (ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects.

(3) The relevant effects are of—

- (a) making B dependent on, or subordinate to, A,
20 (b) isolating B from friends, family members or other sources of social interaction or support,
(c) controlling, regulating or monitoring B’s day-to-day activities,
(d) depriving B of, or restricting B’s, freedom of action,
(e) making B feel frightened, humiliated, degraded, punished or intimidated.

(4) In subsection (2)—

- 25 (a) the reference in paragraph (a) to violent behaviour includes both sexual violence and physical violence,
(b) in paragraph (c), “child” means a person under 18 years of age.

(5) None of the paragraphs of subsection (2) or (as the case may be) (3) is to be taken to limit the meaning of any of the other paragraphs of that subsection.

30 **Impact of behaviour on victim**

3.—(1) 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).

35 (2) A’s 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).

(3) 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.

40 (4) In this section, “A” and “B” are as referred to in section 1 or (as the case may be) 2.

Meaning of behaviour etc.

4.—(1) This section has effect for the purposes of this Chapter.

(2) Behaviour is behaviour of any kind, including (for example)—

(a) saying or otherwise communicating something as well as doing something,

5 (b) intentionally failing—

(i) to do something, or

(ii) to say or otherwise communicate something.

(3) Behaviour is directed at a person if it is directed at the person in any way, including (for example)—

10 (a) through—

(i) conduct relating to the person's ability to acquire, use or maintain money or other property or the person's ability to obtain goods or services, or

(ii) other conduct concerning or towards property, or

15 (b) by making use of a third party,

as well as in a personal or direct manner.

(4) A course of behaviour involves behaviour on at least two occasions.

*Personal connection***Meaning of personal connection**

20 5.—(1) This section has effect for the purposes of this Chapter.

(2) Two people ("A" and "B") are personally connected to each other if any of these applies—

(a) they are, or have been, married to each other,

(b) they are, or have been, civil partners of each other,

25 (c) they are living together, or have lived together, as if spouses of each other,

(d) they are, or have been, otherwise in an intimate personal relationship with each other, or

(e) they are members of the same family.

(3) They are members of the same family—

30 (a) if B is A's parent, grandparent, child, grandchild, brother or sister, or

(b) if—

(i) one of them is in a relevant relationship with someone else ("C"), and

(ii) the other of them is C's parent, grandparent, child, grandchild, brother or sister.

35 (4) One person is in a relevant relationship with someone else if—

(a) they are married to, or are civil partners of, each other, or

(b) they are living together as if spouses of each other.

(5) In determining family membership—

40 (a) a relationship of the half blood or by affinity is to be treated as a relationship of the whole blood, and

(b) a stepchild of a person is to be treated as the person's child.

Establishing connection by notice

6.—(1) In proceedings in respect of a charge against a person (“A”) of the domestic abuse offence, the prosecutor may serve notice on A or A’s solicitor proposing that the matter of A and B being personally connected as required for proof of the charge is to be taken as established for the purposes of the proceedings.

(2) Notice by the prosecutor under this section must be—

(a) in writing, and

(b) served no later than the point in the proceedings when the prosecutor complies with section 3 of the Criminal Procedure and Investigations Act 1996 (or purports to comply with it).

(3) If notice is served by the prosecutor under this section, the matter is to be taken as established for the purposes of the proceedings unless it is challenged in accordance with this section.

(4) The matter is challenged in accordance with this section by—

(a) A or A’s solicitor serving on the Director of Public Prosecutions for Northern Ireland, not later than the seventh day after the day of service of notice by the prosecutor under this section, written counter-notice of objection stating the reason for objection, or

(b) such later objection as the court allows in the interests of justice.

(5) In this section, “B” is the person in relation to whom the offence is alleged to have been committed.

How notice is to be served

7.—(1) This section governs service in proceedings by virtue of section 6—

(a) of notice on—

(i) a person (“A”) charged in the proceedings, or

(ii) A’s solicitor, or

(b) of notice that is counter-notice on the Director of Public Prosecutions for Northern Ireland (“the DPP”).

(2) Notice is served on the person by—

(a) handing it to the person,

(b) leaving it at the person’s proper address,

(c) sending it by post to the person at the person’s proper address, or

(d) where subsection (3) applies, sending it to the person by electronic means.

(3) This subsection applies where—

(a) the person on whom notice is to be served has indicated that it may be served on the person by being sent to an electronic address and in an electronic form specified by the person in that regard, and

(b) it is sent to that address in that form.

(4) Notice sent by electronic means is, unless the contrary is proved, to be treated as having been served at 09:00 on the working day immediately following the day on which it was sent.

(5) For the purposes of this section—

5 (a) an electronic address is any number or address used for sending or receiving documents or information by electronic means,

(b) a working day is a day other than a Sunday or a public holiday.

(6) The references in this section to a person’s proper address are to—

(a) where the person is A, A’s usual or last known address,

10 (b) where the person is—

(i) A’s solicitor, or

(ii) the DPP,

the address of the person’s office.

15 (7) In its application to service as governed by this section, section 24(1) of the Interpretation Act (Northern Ireland) 1954 is to be read as if the reference in that section to the person’s usual or last known place of abode or business were a reference to the person’s proper address.

Aggravating factors

Aggravation where victim is under 18

20 **8.**—(1) It may be specified as an allegation alongside a charge of the domestic abuse offence against a person (“A”) that the offence is aggravated by reason of the person in relation to whom the offence is alleged to have been committed (“B”) having been under 18 years of age at the time of any of the behaviour constituting the offence.

25 (2) Subsection (3) applies where—

(a) an allegation of aggravation is specified as mentioned in subsection (1), and

(b) the aggravation as well as the charge is proved.

(3) The court must—

30 (a) state on conviction that the offence is aggravated by reason of B having been under 18 years of age at the relevant time,

(b) record the conviction in a way that shows that the offence is so aggravated,

(c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and

35 (d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.

(4) However, if—

(a) the charge is proved, but

(b) the aggravation is not proved,

40 A’s conviction is as if there were no reference to the aggravation alongside the charge.

Aggravation where relevant child is involved

9.—(1) It may be specified as an allegation alongside a charge of the domestic abuse offence against a person (“A”) that the offence is aggravated by reason of involving a relevant child.

5 (2) For the purposes of subsection (1), the domestic abuse offence is aggravated by reason of involving a relevant child if—

(a) at any time in the commission of the offence—

(i) A directed behaviour at the child, or

(ii) A made use of the child in directing behaviour at B, or

10 (b) the child saw or heard, or was present during, an incident of behaviour which A directed at B as part of the course of behaviour.

(3) Subsection (4) applies where—

(a) an allegation of aggravation is specified as mentioned in subsection (1), and

15 (b) the aggravation as well as the charge is proved.

(4) The court must—

(a) state on conviction that the offence is aggravated by reason of involving a relevant child,

(b) record the conviction in a way that shows that the offence is so aggravated,

20 (c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and

(d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.

(5) However, if—

25 (a) the charge is proved, but

(b) the aggravation is not proved,

A’s conviction is as if there were no reference to the aggravation alongside the charge.

(6) In this section—

30 (a) “relevant child” means a person under 18 years of age who is not A or B,

(b) “B” is the person in relation to whom the offence is alleged to have been committed.

*Applicable rules and penalty***Behaviour occurring outside the UK**

35 **10.**—(1) If—

(a) a person’s course of behaviour consists of or includes behaviour occurring in a country outside the United Kingdom,

(b) the course of behaviour would constitute the domestic abuse offence if it occurred in Northern Ireland, and

40 (c) the person is a United Kingdom national or is habitually resident in Northern Ireland,

the person commits the domestic abuse offence as if the course of behaviour occurred in Northern Ireland.

(2) In this section—

“country” includes territory,

5 “United Kingdom national” means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject, or

10 (c) a British protected person within the meaning of that Act.

Exception where responsibility for children

11.—(1) A person (“A”) does not commit the domestic abuse offence in relation to another person (“B”) by engaging in behaviour that is abusive of B at a time when—

15 (a) B is under 18 years of age, and

(b) A has responsibility for B.

(2) Section 36 of the Children and Young Persons Act (Northern Ireland) 1968 applies for the purposes of determining whether A has responsibility for B as it applies for the purposes of determining whether a person has responsibility for a child or young person within the meaning of that Act.

Defence on grounds of reasonableness

12.—(1) In proceedings in respect of a charge against a person (“A”) of the domestic abuse offence, it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances.

25 (2) That is shown if—

(a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (1), and

(b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (1).

Alternative available for conviction

13.—(1) In proceedings in respect of a charge against a person (“A”) of the domestic abuse offence, A may be convicted of an alternative offence if the facts proved against A—

(a) do not amount to the domestic abuse offence, but

35 (b) do amount to the alternative offence.

(2) For the purposes of subsection (1), the alternative offences are—

(a) an offence under Article 4 of the Protection from Harassment (Northern Ireland) Order 1997 (harassment),

40 (b) an offence under Article 6 of that Order (putting people in fear of violence).

Penalty for the offence

14. A person who commits the domestic abuse offence is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
- 5 (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).

CHAPTER 2

AGGRAVATION AS TO DOMESTIC ABUSE

Sentencing aggravation

10 **Aggravation as to domestic abuse**

15.—(1) It may be specified as an allegation alongside a charge of an offence against a person (“A”) that the offence is aggravated by reason of involving domestic abuse.

15 (2) An offence as mentioned in subsection (1) does not include the domestic abuse offence (see section 1).

(3) Subsection (4) applies where—

- (a) an allegation of aggravation is specified as mentioned in subsection (1), and
- (b) the aggravation as well as the charge is proved.

20 (4) The court must—

- (a) state on conviction that the offence is aggravated by reason of involving domestic abuse,
- (b) record the conviction in a way that shows that the offence is so aggravated,
- 25 (c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and
- (d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.

(5) However, if—

- (a) the charge is proved, but
- 30 (b) the aggravation is not proved,

A’s conviction is as if there were no reference to the aggravation alongside the charge.

What amounts to the aggravation

35 16.—(1) For the purposes of section 15, an offence committed by a person (“A”) is aggravated by reason of involving domestic abuse if the three listed conditions are met.

(2) The listed conditions are—

- (a) that a reasonable person would consider the commission of the offence by A to be likely to cause another person (“B”) to suffer physical or
- 40 psychological harm,

(b) that A—

(i) intends the commission of the offence to cause B to suffer physical or psychological harm, or

5 (ii) is reckless as to whether the commission of the offence causes B to suffer physical or psychological harm, and

(c) that A and B are personally connected to each other at the time.

(3) An offence committed by A can be aggravated by virtue of this section whether or not—

(a) the offence is committed against B, or

10 (b) the commission of the offence actually causes B to suffer harm of the relevant sort.

(4) Nothing in this section prevents evidence from being led in proceedings for the offence about harm actually suffered by B as a result of A's commission of the offence.

15 (5) The references in this section to psychological harm include fear, alarm and distress.

Exception regarding the aggravation

17.—(1) For the purposes of section 16, an offence committed by a person (“A”) cannot be aggravated in relation to another person (“B”) by reason of involving domestic abuse if, at the time of the commission of the offence—

(a) B is under 18 years of age, and

(b) A has responsibility for B.

25 (2) Section 36 of the Children and Young Persons Act (Northern Ireland) 1968 applies for the purposes of determining whether A has responsibility for B as it applies for the purposes of determining whether a person has responsibility for a child or young person within the meaning of that Act.

Personal connection

Meaning of personal connection

18.—(1) This section has effect for the purposes of this Chapter.

30 (2) Two people (“A” and “B”) are personally connected to each other if any of these applies—

(a) they are, or have been, married to each other,

(b) they are, or have been, civil partners of each other,

(c) they are living together, or have lived together, as if spouses of each other,

35 (d) they are, or have been, otherwise in an intimate personal relationship with each other, or

(e) they are members of the same family.

(3) They are members of the same family—

(a) if B is A's parent, grandparent, child, grandchild, brother or sister, or

40 (b) if—

(i) one of them is in a relevant relationship with someone else (“C”), and

(ii) the other of them is C's parent, grandparent, child, grandchild, brother or sister.

(4) One person is in a relevant relationship with someone else if—

(a) they are married to, or are civil partners of, each other, or

5 (b) they are living together as if spouses of each other.

(5) In determining family membership—

(a) a relationship of the half blood or by affinity is to be treated as a relationship of the whole blood, and

(b) a stepchild of a person is to be treated as the person's child.

10 **Establishing connection by notice**

15 **19.**—(1) In proceedings in respect of a charge against a person ("A") of an offence alongside which there is specification of an allegation of aggravation as mentioned in section 15, the prosecutor may serve notice on A or A's solicitor proposing that the matter of A and B being personally connected as required for proof of the aggravation is to be taken as established for the purposes of the proceedings.

(2) Notice by the prosecutor under this section must be—

(a) in writing, and

20 (b) served no later than the point in the proceedings when the prosecutor complies with section 3 of the Criminal Procedure and Investigations Act 1996 (or purports to comply with it).

(3) If notice is served by the prosecutor under this section, the matter is to be taken as established for the purposes of the proceedings unless it is challenged in accordance with this section.

25 (4) The matter is challenged in accordance with this section by—

(a) A or A's solicitor serving on the Director of Public Prosecutions for Northern Ireland, not later than the seventh day after the day of service of notice by the prosecutor under this section, written counter-notice of objection stating the reason for objection, or

30 (b) such later objection as the court allows in the interests of justice.

(5) In this section, "B" is the person in relation to whom the offence is alleged to have been committed.

How notice is to be served

20.—(1) This section governs service in proceedings by virtue of section 19—

35 (a) of notice on—

(i) a person ("A") charged in the proceedings, or

(ii) A's solicitor, or

(b) of notice that is counter-notice on the Director of Public Prosecutions for Northern Ireland ("the DPP").

40 (2) Notice is served on the person by—

(a) handing it to the person,

- (b) leaving it at the person's proper address,
- (c) sending it by post to the person at the person's proper address, or
- (d) where subsection (3) applies, sending it to the person by electronic means.

(3) This subsection applies where—

- 5 (a) the person on whom notice is to be served has indicated that it may be served on the person by being sent to an electronic address and in an electronic form specified by the person in that regard, and
- (b) it is sent to that address in that form.

10 (4) Notice sent by electronic means is, unless the contrary is proved, to be treated as having been served at 09:00 on the working day immediately following the day on which it was sent.

(5) For the purposes of this section—

- (a) an electronic address is any number or address used for sending or receiving documents or information by electronic means,
- 15 (b) a working day is a day other than a Sunday or a public holiday.

(6) The references in this section to a person's proper address are to—

- (a) where the person is A, A's usual or last known address,
- (b) where the person is—
 - (i) A's solicitor, or
 - 20 (ii) the DPP,

the address of the person's office.

25 (7) In its application to service as governed by this section, section 24(1) of the Interpretation Act (Northern Ireland) 1954 is to be read as if the reference in that section to the person's usual or last known place of abode or business were a reference to the person's proper address.

CHAPTER 3

AMENDMENTS AND GUIDANCE

Criminal cases involving domestic abuse

No right to claim trial by jury

30 **21.** In Article 29(1) of the Magistrates' Courts (Northern Ireland) Order 1981 (right to claim trial by jury for certain summary offences), after sub-paragraph (p) insert—

“(q) section 1 of the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020 (the domestic abuse offence).”.

35 **Special measures directions**

22.—(1) The Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

(2) In Article 5 (witnesses eligible for assistance on grounds of fear or distress about testifying)—

(a) in paragraph (4), for “a sexual offence or a slavery or human trafficking offence” substitute “an offence listed in paragraph (5)”;

(b) after paragraph (4) insert—

“(5) The offences are—

(a) a sexual offence,

(b) a slavery or human trafficking offence,

(c) an offence involving domestic abuse (see Article 3A).”.

(3) In Article 13(4)(a) (evidence given in private), for “a sexual offence or a slavery or human trafficking offence” substitute “an offence listed in Article 5(5)”.

10 **Prohibition of cross-examination in person**

23.—(1) The Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

(2) After Article 22 insert—

“Complainants in proceedings involving domestic abuse

22A. No person charged with an offence involving domestic abuse (see Article 3A) may in any criminal proceedings cross-examine in person a witness who is the complainant, either—

(a) in connection with that offence, or

(b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.”.

(3) In Article 23 (child complainants and other child witnesses)—

(a) in paragraph (3), after sub-paragraph (cc) insert—

“(cd) an offence involving domestic abuse (see Article 3A);”,

(b) in paragraph (4)(a), for “or (cc)” substitute “, (cc) or (cd)”.

(4) In Article 24 (direction prohibiting accused from cross-examining particular witness)—

(a) in paragraph (1), for “neither of Articles 22 and 23” substitute “none of Articles 22, 22A and 23”,

(b) in paragraph (3)(e)—

(i) after “Article”, where it first occurs, insert “22A or”, and

(ii) after “22” insert “, 22A”.

(5) In Article 26(1) (defence representation for purposes of cross-examination), after “22,” insert “22A,”.

(6) In Article 27(1) (warning to jury), after “22,” insert “22A,”.

35 **Meaning of offence involving domestic abuse etc.**

24.—(1) The Criminal Evidence (Northern Ireland) Order 1999 is amended as follows (in connection with sections 22 and 23).

(2) In Article 2(2) (interpretation), in the definition of “the complainant”, after “committed” insert “(but see also Article 3A(2) to (5))”.

40 (3) After Article 3 insert—

“Meaning of “offence involving domestic abuse” etc.

3A.—(1) In this Order, “offence involving domestic abuse” means—

(a) an offence under section 1 of the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020 (the domestic abuse offence),

(b) an offence of any kind in respect of which there is specification in accordance with section 15 of the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020 that the offence is aggravated by reason of involving domestic abuse.

(2) In this Order, “the complainant”, in relation to an offence (or alleged offence) falling within paragraph (1)(b) means a person in respect of whom the prosecutor gives notice to the court asserting that—

(a) the offence is so aggravated in relation to the person, and

(b) the accused was personally connected to the person at the time.

(3) A reference to a person in paragraph (2) is not limited to someone against or in relation to whom the offence was (or is alleged to have been) committed.

(4) Paragraph (2) does not, where in any case—

(a) notice as referred to in that paragraph is given, and

(b) the offence is also mentioned in Article 3,

prevent someone else from additionally being the complainant in relation to the offence within the meaning of Article 2(2).

(5) Article 2(2), but not paragraph (2), determines who the complainant is in relation to the offence where no notice as referred to in that paragraph is given in the case.”.

Guidance on criminal aspects of domestic abuse

Guidance about domestic abuse

25.—(1) The Department of Justice may issue guidance about—

(a) the effect of this Part, and

(b) other matters as to criminal law or procedure relating to domestic abuse in Northern Ireland.

(2) A person exercising public functions to whom guidance issued under this section relates must have regard to it in the exercise of those functions.

(3) The Department of Justice may revise any guidance issued under this section.

(4) The Department of Justice must publish any guidance issued or revised under this section.

(5) Nothing in this section permits the Department of Justice to issue guidance to a court or tribunal.

PART 2

FAMILY PROCEEDINGS: CROSS-EXAMINATION

Prohibition of cross-examination in person

26. In the Family Law (Northern Ireland) Order 1993, after Article 11 insert—

5 *“Prohibition of cross-examination in person in family proceedings*

Prohibition of cross-examination in person: introductory

11A.—(1) For the purposes of Articles 11B to 11I—

“family proceedings” means—

- 10 (a) proceedings which are family proceedings for the purposes of Article 12 (family proceedings rules), or
- (b) proceedings in a court of summary jurisdiction sitting to hear domestic proceedings within the meaning of Article 88 of the Magistrates’ Courts (Northern Ireland) Order 1981,

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

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

Prohibition of cross-examination in person: victims of offences

20 11B.—(1) 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 a witness who is the victim, or alleged victim, of that offence.

25 (2) In family proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of or given a caution for, or is charged with, that offence.

30 (3) Paragraphs (1) and (2) do not apply to a conviction that is spent for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978 unless evidence in relation to the conviction is admissible in or may be required in the proceedings by virtue of Article 8(2), (3) or (4) of that Order.

35 (4) Cross-examination in breach of paragraph (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.

(5) In this Article—

“caution” means—

- 40 (a) in the case of Northern Ireland—
- (i) a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or

(ii) any other caution given to a person in Northern Ireland in respect of an offence which, at the time the caution is given, the person has admitted,

(b) in the case of England and Wales—

- 5 (i) a conditional caution given under section 22 of the Criminal Justice Act 2003,
(ii) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or
10 (iii) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted,

15 (c) in the case of Scotland, anything corresponding to a caution falling within sub-paragraph (b) (however described) which is given to a person in respect of an offence under the law of Scotland,

“conviction” means—

- (a) wherever occurring in Northern Ireland, Scotland, or England and Wales—
20 (i) a conviction before a court, or
(ii) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged,
(b) wherever occurring within or outside the United Kingdom, a
25 conviction in service disciplinary proceedings,

“service disciplinary proceedings” means—

- (a) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the
30 meaning of that Act),
(b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence),
35 (c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976,

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

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

- 45 (a) Article 6 of the Criminal Justice (Northern Ireland) Order 1996 or any corresponding provision,
(b) section 187 of the Armed Forces Act 2006 or any corresponding provision.

(7) For the purposes of this Article—

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

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

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Prohibition of cross-examination in person: persons protected by injunctions etc.

11C.—(1) 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.

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(2) In family proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.

(3) Cross-examination in breach of paragraph (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.

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(4) In this Article “protective injunction” means an order, injunction or interdict specified, or of a description specified, in regulations made by the Department of Justice.

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(5) For the purposes of this Article, a protective injunction is an “on-notice” protective injunction if—

(a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or

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(b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.

Prohibition of cross-examination in person: evidence of domestic abuse

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11D.—(1) In family proceedings, where specified evidence is adduced that a person who is a party to the proceedings has engaged in behaviour that was abusive of a witness to whom that party is personally connected, that party may not cross-examine the witness in person.

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(2) In family proceedings, where specified evidence is adduced that a person who is a witness has engaged in behaviour that was abusive of a party to the proceedings to whom the witness is personally connected, that party to the proceedings may not cross-examine the witness in person.

(3) In this Article “specified evidence” means evidence specified, or of a description specified, in regulations made by the Department of Justice.

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(4) Regulations under paragraph (3) may provide that any evidence which satisfies the court that a person has engaged in abusive behaviour, or abusive behaviour of a specified description, is specified evidence for the purposes of this Article.

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

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

Direction for prohibition of cross-examination in person: other cases

10 11E.—(1) In family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—

- 15 (a) none of Articles 11B to 11D operates to prevent the party from cross-examining the witness, and
- (b) it appears to the court that—
 - (i) the quality condition or the significant distress condition is met, and
 - 15 (ii) it would not be contrary to the interests of justice to give the direction.

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

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

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

- 25 (a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and
- (b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.

(4) A direction under this Article may be made by the court—

- (a) on an application made by a party to the proceedings, or
- (b) of its own motion.

35 (5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard to (among other things)—

- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person,
- (b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person,
- 40 (c) the nature of the questions likely to be asked, having regard to the issues in the proceedings,

- (d) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings,
- 5 (e) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings,
- (f) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness,
- 10 (g) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party,
- (h) any relationship (of whatever nature) between the witness and the party.

(6) Any reference in this Article to the quality of a witness's evidence is to its quality in terms of completeness, coherence and accuracy.

15 (7) For this purpose, "coherence" refers to a witness's ability in giving evidence to give answers which—

- (a) address the questions put to the witness, and
- (b) can be understood, both individually and collectively.

Directions under Article 11E: supplementary

20 11F.—(1) A direction under Article 11E has binding effect from the time it is made until the witness in relation to whom it applies is discharged.

(2) But the court may revoke a direction under Article 11E before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—

- 25 (a) on an application made by a party to the proceedings, or
- (b) of its own motion.

(3) The court may revoke a direction under Article 11E on an application made by a party to the proceedings only if there has been a material change of circumstances since—

- 30 (a) the direction was given, or
- (b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.

(4) The court must state its reasons for—

- 35 (a) giving a direction under Article 11E,
- (b) refusing an application for a direction under Article 11E,
- (c) revoking a direction under Article 11E,
- (d) refusing an application for the revocation of a direction under Article 11E.

Alternatives to cross-examination in person

11G.—(1) This Article applies where a party to family proceedings is prevented from cross-examining a witness in person by virtue of any of Articles 11B to 11E.

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

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

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

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

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

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

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

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

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

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(8) For the purposes of this Article—

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

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Costs of legal representatives appointed under Article 11G(6)

11H.—(1) The Department of Justice must pay such sums as the Department may determine in respect of—

(a) fees or costs properly incurred by a qualified legal representative appointed under Article 11G(6), and

(b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

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

(a) to be such amounts as are specified in the regulations,

(b) to be calculated in accordance with—

(i) a rate or scale specified in the regulations, or

10 (ii) other provision made by or under the regulations.

Guidance for legal representatives appointed under Article 11G(6)

11I.—(1) The Department of Justice may issue guidance in connection with the role which a qualified legal representative appointed under Article 11G(6) in connection with any family proceedings is to play in the proceedings, including (among other things) guidance about the effect of Article 11G(7).

(2) A qualified legal representative appointed under Article 11G(6) must have regard to any guidance issued under this Article.

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

(4) The Department of Justice must publish—

(a) any guidance issued under this Article, and

(b) any revisions of guidance issued under this Article.

Regulations under Articles 11A to 11H

11J.—(1) Any power of the Department of Justice to make regulations under Articles 11A to 11H includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

(2) Regulations that contain (with or without other provisions) provision under Article 11A(2) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(3) Regulations that contain provision under Articles 11B to 11H are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft before and approved by a resolution of the Assembly).”.

35 PART 3

COMMENCEMENT AND SHORT TITLE

Commencement

27.—(1) This section and section 28 come into operation on the day after the day on which this Act receives Royal Assent.

(2) The other provisions of this Act come into operation on such day or days as the Department of Justice may by order appoint.

(3) An order under this section may contain such transitional, transitory or saving provision as the Department of Justice considers appropriate.

5 **Short title**

28. This Act may be cited as the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020.