

FROM THE OFFICE OF THE JUSTICE MINISTER



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TO: CHRISTINE DARRAH

UPDATE TO THE JUSTICE COMMITTEE ON THE DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL

SUMMARY

Business Area: Safer Communities – Community Safety Division

Issue: Briefing to update Justice Committee Members on the Domestic Abuse and Family Proceedings Bill, for which Executive approval to introduce is being sought.

Restrictions: Official – Policy in development.

Action Required: Members to note the written brief – an oral evidence session will be provided to Members at the meeting on 19 March if you are content.

Attendees: Dr Veronica Holland, Head of Violence Against the Person Branch
Emma Crozier, Violence Against the Person Branch
Jane Maguire, Head of Family Courts and Tribunals Branch
Detective Superintendent Anthony McNally PSNI

BACKGROUND

Members are aware that the Minister intends to introduce legislation to provide for a new domestic abuse offence, focusing on non-physical abusive behaviour. The Bill will also

make provision to protect victims of domestic abuse from being cross-examined by

perpetrators in person in family proceedings. A copy of the Bill and Explanatory and Financial Memorandum is attached (**Appendices A and B**). This paper sets out the background to the Bill, provides an overview of engagement with criminal justice and voluntary sector partners and summaries the key provisions in the Bill. Members will wish to note that Executive Agreement to the Bill is currently being sought.

Task and Finish Group

2. The Department established a cross sectoral Task and Finish Group in late 2016 to progress the domestic abuse offence. The group drew membership from the police, PBNI, PPS, PSNI as well as Nexus, NICEM, NSPCC, Rainbow and Women's Aid Federation. The function of the group was to consider how best to develop, introduce and monitor a domestic abuse offence locally and also consider the impact and implications changes will have on current policy and practice.

3. Members of the Task and Finish Group agreed that:

- when comparing provisions across the United Kingdom, the approach and shaping of the offence in Scotland was deemed most appropriate to meet the needs in Northern Ireland – the offence for NI as currently drafted most closely reflects the Scottish offence;
- the Department should develop a broad offence capturing patterns of both psychological and emotional abuse as well as physically violent behaviour perpetrated by a partner, ex-partner or close family member;
- provisions relating to psychological and emotional abuse should cover on-line behaviour; and
- sentencing should reflect the seriousness of the offence.

4. Outside of the formal Task and Finish Group there have also been ongoing discussions with our main voluntary and community sector stakeholders (Men's Advisory Project, Nexus, NSPCC Young Witness Service, Victim Support NI and Women's Aid Federation).

Domestic Abuse Offence

5. It is the intent that the domestic abuse offence that is to be introduced will:

- address harmful behaviour not captured under existing offences;
- recognise in law the patterns of behaviour involved;
- provide the police with the opportunity to take forward charges upon presentation of a pattern of non-violent abusive behaviour, potentially supporting earlier intervention in such cases;
- provide additional protections to victims through an enhanced legislative framework;
- encourage victims to come forward and engage with the criminal justice system through an expanded recognition of abusive behaviour; and
- ultimately reduce the harm caused by abusive behaviour.

6. In very general terms, the offence will capture patterns of psychological and emotionally abusive (non-physical) behaviour that is controlling and coercive in nature and/or patterns of physical/violent/sexual behaviour against a partner, former partner or close family member.

7. The provisions will make it a criminal offence for a person to engage in a pattern of behaviour (two or more occasions) that a reasonable person, in all the circumstances, would consider likely to cause the victim physical or psychological harm e.g. fear, alarm or distress. The offence would be committed when the accused either intends to cause

harm to the victim or is reckless (i.e. knew or ought to have known) that their behaviour would be likely to cause harm.

8. The intention would be that the offence should be engaged where the accused demonstrates abusive behaviour of any kind – i.e. things said /communicated as well as things done. Given the nature of domestic abuse, the intention would be that the scope of the offence would include behaviour that may not be directed towards the intended victim, but would be intended to harm them (or be reckless to the intent). This would include behaviour directed towards a third party (such as children/other family members), pets, or property.

9. The sheer range of behaviours that may form part of a pattern of abusive and violent behaviour exercised by an abuser over their victim is such that it is not feasible to provide a full list of behaviours that may constitute abuse. Rather the offence has been framed to reference a range of effects the behaviour might have, though not be limited to this.

10. The intention is that the offence should not criminalise ordinary arguments and friction that can occur in almost any close relationship. It is therefore intended to provide a defence for the behaviour where it can be demonstrated that, in the particular circumstances, it is deemed to be reasonable. This may be applicable, for example, where a family member is a carer for a person and their behaviour is necessary in order to prevent harm occurring to them.

11. In summary, the key elements of the new domestic abuse offence would be that:

- abusive behaviour would include behaviour directed towards the victim that is physically or psychologically violent, threatening or intimidating;
- the offence would also cover behaviour directed towards the victim, their pet or property that is abusive because it is coercive or controlling or amounts to psychological, emotional, financial or sexual abuse of the other person;

- the provisions would apply where the behaviour is intentional, or reckless as to its effect;
- harm would not have to be caused as a result of the abusive behaviour, rather an offence would be committed where a reasonable person would consider that the behaviour would be likely to cause harm. This could mean that there would be further opportunities to explore police led prosecutions with limited victim involvement;
- it would make reference to types of behaviour that would be considered to be abusive, though not be limited to those listed;
- abusive behaviour would relate to saying, doing or communicating something as well as a failure to do this (where it is intentional or the person was reckless);
- a defence would be that the behaviour in the particular circumstances of the case is deemed to be reasonable. It would be for the defence to provide evidence of this;
- three aggravators would be available, where a child is involved as a direct victim as a partner or family member, except for parent-child relationships) or sees, hears or is present while abusive behaviour is being carried out. A third generic aggravator would apply to those general offences, such as criminal damage, where it involves domestic abuse. Under both aspects this would provide the court with the option of increasing sentencing where the aggravation is proved; and
- guidance will be issued around the operation of the domestic abuse offence.

Prohibition of cross-examination in person in family proceedings

12. The provision in relation to prohibition of cross-examination in person in family proceedings is intended to ensure that the family justice system is not exploited by perpetrators as a means to continue to abuse and control their victims, as well as enabling victims to be supported to give their best evidence. There will be an automatic prohibition on a party to family proceedings cross-examining a witness in person in certain circumstances and courts will be given a discretionary power to prohibit cross-examination in person in other circumstances, where it would affect the quality of the

witness' evidence or cause significant distress. It will also give a court hearing family proceedings the power to appoint a publicly funded legal representative to conduct cross-examination on behalf of a party prohibited from doing so in person.

Further detail on provisions

13. A more detailed overview of the key provisions contained within the Bill, by way of a clause by clause explanation, is provided at **Appendix C** should Members find this helpful.

14. Members will wish to note that the Departmental Solicitor's Office has advised that the Bill is within the legislative competence of the Assembly, with Legislative Counsel of a similar view. The Bill issued informally to the Attorney General at the start of the month. The Attorney, while generally supportive, has expressed, informally, two reservations on competence (whether an aspect of the new offence as drafted is sufficiently foreseeable and whether the criminalisation of behaviour occurring outside the UK 'forms part of the law of a country other than Northern Ireland'). Discussions are ongoing on those reservations. On balance it is not considered that this should prevent introduction of the Bill to the Assembly.

Engagement with stakeholders

15. Members will wish to note that as part of the work undertaken on the Bill to date there has been extensive engagement with statutory criminal justice partners, key voluntary and community sector stakeholders as well as local representatives. This has been critical to the work that the Department has taken forward not only in relation to the domestic abuse offence but also a number of other strands of work being progressed under the seven year domestic and sexual violence strategy.

16. This included engagement and briefing sessions with political representatives (both MPs and justice representatives of the main political parties) as well as our key

voluntary and community sector stakeholders. This was taken forward as part of the work on the domestic abuse provisions when contained within the Westminster Domestic Abuse Bill prior to the return of the Assembly. The provisions have not substantively changed within the current Bill, although now includes the generic aggravator.

Finance

17. Work has been undertaken with our statutory criminal justice partners on the likely cost implications associated with the new domestic abuse offence. In terms of costs and benefits it is considered that a significant proportion of the offences that will be brought forward will replace existing offences; that is where there may previously have been an assault or criminal damage where abusive behaviour may have been present but it was not previously possible to criminalise this. There will also be some new cases where the offence relates solely to non-physical abusive behaviour that will now be captured by the new offence. While there will be a proportion of new cases under the Bill, which will incur additional costs, as a whole it is intended that the Bill will primarily be delivered within existing resources. It is anticipated that the costs associated with the new domestic abuse offence will represent a 2 – 4% increase in current cases, of which there will be some associated costs. A best estimate with the 3% midpoint represents an increase of up to £1.2m in addition to the costs associated with the provision in relation to family proceedings are currently estimated to be no more than £50,000 per annum.

18. Budgets for future years are not known at this stage. The introduction of this Bill may increase the level of inescapable pressures to be managed in future years. Where any bids are required in future spending reviews, any decisions to commit resources may create inescapable pressures that will have to be prioritised and funded from any future budgets, although this is not anticipated at this stage.

Way forward

19. Subject to the necessary approvals the Minister would intend to introduce the Domestic Abuse and Family Proceedings Bill into the Assembly before Easter recess, on

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Monday 30 March, with second stage of the Bill taking place after that. Officials would be happy to answer any queries that Members may have at the oral briefing session, which we are content to facilitate at your earliest convenience.

**Departmental Assembly Liaison
Officer (DALO)**

FROM THE OFFICE OF THE JUSTICE MINISTER



APPENDIX A

DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL

See separate attachment

FROM THE OFFICE OF THE JUSTICE MINISTER



APPENDIX B

**EXPLANATORY AND FINANCIAL MEMORANDUM FOR THE DOMESTIC ABUSE
AND FAMILY PROCEEDINGS BILL**

See separate attachment

APPENDIX C

OVERVIEW OF DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL

This appendix provides a description of the clauses in the draft Bill. For ease of explanation these are not necessarily in the correct numerical sequence, dealing with the substantive clauses first followed by other supplementary and/or consequential provisions.

Clause 1 – The domestic abuse offence

Clause 1 of the Bill makes it an offence for someone to engage in a course of abusive behaviour, (that is on at least two occasions), against another person with whom they are (or have been) personally connected. Two individuals are personally connected if they are, or have been, married, civil partners or living together as such, or otherwise have been in an intimate personal relationship with each other, or are close family members. These will be referred to as ‘the accused’ and their ‘partner/connected person’.

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, nor long-term.

For the offence to apply it is subject to two further conditions:

First, 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 (fear, alarm and distress).

Second, that the accused intended to cause harm or was reckless as to whether or not harm would be caused. This condition could be met, for example, where the accused is persistently verbally abusive and demeaning towards their partner/connected person but

claims that they did not intend their behaviour to cause psychological harm, and the court is satisfied that the accused's behaviour was such that they were, at the very least, reckless as to whether their behaviour would cause harm to their partner/connected person.

As a result the offence can be committed regardless of whether or not harm is actually caused to an individual.

The provisions may apply where two teenagers are involved in an abusive relationship or where there is domestic abuse of a parent or grandparent by an adult child.

Clause 2 – What amounts to abusive behaviour

Clause 2 sets out what constitutes abusive behaviour for the purposes of the offence. The description is not exhaustive and includes violent or threatening behaviour (including sexual violence and abuse). It also includes behaviour that is directed at the partner/connected person, their child or another person, that may have one or more certain effects on the partner/connected person (or a reasonable person would consider it likely to have one or more of those effects).

These effects are broad provisions and capture a range of abusive behaviour including where the accused is:

- making the partner/connected person dependent on, or subordinate to them (e.g. by preventing them from having access to money, forcing them to leave their job or education or excluding them from household decision-making);
- isolating them from friends, family members or sources of social interaction or support (e.g. by not allowing visits from their friends or family or deliberately failing to pass on messages from friends or family);
- controlling, regulating or monitoring their day to day activities (e.g. by controlling their movements, checking their phone, e-mail or social media use, controlling what

clothes they can or cannot wear, 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);

- depriving or restricting their freedom of action (e.g. by 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); and
- making them feel frightened, humiliated, degraded, punished or intimidated (e.g. through abusive name-calling, threats of self-harm or playing mind games that cause them to doubt their sanity).

Clause 3 – Impact of behaviour on victim

Clause 3 provides that, for the offence to be committed, it is not necessary to prove that the behaviour actually caused the partner/connected person to suffer physical or psychological harm, or that the effects of the abusive behaviour, (set out under clause 2) actually caused harm. Rather it is sufficient that a reasonable person would consider that the behaviour would be likely to result in harm. This is intended to cover situations where a victim may not consider that they have been harmed, effectively due to either their resilience or abusive behaviour having become normalised within the context of the relationship.

This provision does not prevent evidence being led of actual harm, as a result of the alleged course of behaviour, or of effects that the behaviour actually had on the partner/connected person.

Clause 4 – Meaning of behaviour, etc.

Clause 4 sets out what is meant by behaviour for the purpose of the Bill and how it can be carried out. It provides that behaviour includes saying or otherwise communicating something as well as doing something. It includes an intentional failure to do, say, or

otherwise communicate something. This could include, for example, a consistent and deliberate failure to pass on times and dates of appointments or social occasions, a consistent and deliberate failure to feed a family pet or a failure to speak to or communicate with an individual. It also provides that abusive behaviour can include where abuse is carried out with, or through a third party, whether knowingly or not.

Clause 4 also provides for the way in which the behaviour can be carried out, that is behaviour by the accused either directly towards their partner (or a connected person) through another person, third party or property. It is not a requirement that the property must belong to the accused's partner/connected person. It could, for instance, be shared property or property belonging to the parents of their partner/connected person. 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. This might include, for example, the accused getting another person to spy on or report on the activities of their partner or a connected person. The third party's involvement could possibly 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.

It also sets out that a course of behaviour involves behaviour on at least two occasions. While there could be a significant time lapse between the two occasions, it would be for the court to determine in the particular circumstances of a case whether two incidents occurring far apart in time, with no evidence that they formed part of any wider pattern of behaviour, constituted a course of behaviour.

Clause 8 – Aggravation where victim is under 18

Clause 8 provides for aggravation of the domestic abuse offence, where the person in the relationship is under the age of 18. The aggravation applies where it is shown that,

at any time in committing the offence, it has been committed against someone that was under the age of 18. An example of this may be an adult in a relationship with a teenager or a teenage relationship. It would also apply to wider family relationships where one of the individuals is under the age of 18 (it would not apply in relation to an adult child parental relationship given wider child protection provisions are already in place to provide for this).

Where the aggravation is proved, the court must state on conviction that the offence is aggravated and take the aggravation into account when determining 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 a victim under the age of 18. This will clearly demonstrate where there has been aggravation and also enable relevant data to be collected.

Clause 9 – Aggravation where relevant child is involved

Clause 9 provides for aggravation of the domestic abuse offence, where a child is involved (who is not the accused or the victim of the domestic offence). The aggravation applies where it is shown that, at any time in committing the offence, the accused directed behaviour at a child. For example, by threatening violence towards a child or making use of that child control or frighten the partner/connected person.

The aggravation would apply where it is shown that, in committing the offence, the accused made use of the child in directing behaviour at their partner/connected person. An example of this might be where the accused encourages or directs a child to spy on or report on the day-to-day activities of their partner or a connected person, so as to enable the accused to control, regulate or monitor that person's day-to-day activities. The involvement of the child could be unwitting or unwilling, and the child need not be aware that they are helping the accused to abuse their partner or a connected person, for example, by telling the accused about the other person's activities.

The aggravation would also apply where a child sees, hears or is present during an incident of abusive behaviour. This could, for example, be a physical assault or an incident of psychological abuse. The child might be upstairs in their room or they could be trying to protect their mother/father.

The aggravation would apply to the involvement of any child in the domestic abuse offence. 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.

Where the aggravation is proved, the court must state on conviction that the offence is aggravated and take the aggravation into account when determining 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 a child. This will clearly demonstrate where there has been aggravation and also enable relevant data to be collected.

Clause 15 – Aggravation as to domestic abuse

Clause 15 provides for any offence, other than the domestic abuse offence, to be aggravated by reason of involving domestic abuse. For example, the aggravation could be used with a charge of criminal damage, assault or sexual offences in a domestic setting where harm is likely to be caused.

Where the aggravation is proved, the court must state on conviction that the offence is aggravated and take the aggravation into account when determining 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.

Clause 16 – What amounts to the aggravation

As with the domestic abuse offence, there are a number of conditions for the aggravation to apply which are set out in this clause. These are that:

- (i) a reasonable person would need to consider that the offence would be likely to cause the accused's partner or a connected person to suffer physical or psychological harm
- (ii) the accused either intended by 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; and
- (iii) the two individuals are personally connected, that is are partners or connected persons.

The aggravated 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 a friend of their partner/connected person, with the intent of causing psychological harm to their partner or a connected person.

Clause 21 – No right to claim trial by jury

Clause 21 makes an amendment to Article 29 (1) of the Magistrates' Courts (Northern Ireland) Order 1981. The amendment adds the domestic abuse offence to the exemptions listed. This effectively prohibits those accused of a summary offence of domestic abuse, before a Magistrates' Court, from the right to elect for trial by jury at Crown Court.

Clause 22 – Special measures directions

Clause 22 amends the Criminal Evidence Order 1999 to enable complainants of the domestic abuse offence and aggravated offences to automatically be eligible for consideration of special measures when giving evidence (for example the use of live links, screens, etc.)

Clause 23 – Prohibition of cross-examination in person (criminal proceedings)

Clause 23 makes amendments to the Criminal Evidence (Northern Ireland) Order 1999. The purpose of the amendments is to add the domestic abuse offence to the list of offences which prohibits the accused from cross-examining a partner/connected person in person. This applies to the domestic abuse offence and the domestic abuse aggravator as well as any connected offence (of whatever nature) that the accused is charged within in the proceedings. The prohibition applies only to hearings where a partner/connected person is to give evidence.

Both clauses 21 and 23 are intended to remove the possibility that the processes of the criminal justice system may be used by the accused to further abuse and control a partner/connected person.

Clause 26 – Prohibition of cross-examination in person (family proceedings)

Clause 26 inserts new provision into the Family Law (Northern Ireland) Order 1993 to protect victims of abuse from being cross-examined by perpetrators in person in family proceedings. This provision is intended to ensure that the family justice system is not exploited by perpetrators as a means to continue to abuse and control their victims, as well as enabling victims to be supported to give their best evidence.

An automatic prohibition will apply in certain circumstances. A party to family proceedings who has been convicted of, or given a caution for, or is charged with specified offences

will be prohibited from cross-examining, in person, a witness who is the victim, or alleged victim, of that offence and vice versa. Relevant offences will be specified in secondary legislation. An automatic prohibition will also apply where an “on-notice” protective injunction, such as a non-molestation order, is in place. The party against whom the order is made will be prohibited from cross-examining, in person, a witness who is protected by the injunction and vice versa. Relevant protective injunctions will be specified in secondary legislation. Finally, an automatic prohibition on cross-examination in person will apply, where specified evidence is adduced that a party to family proceedings has been abusive towards a witness to whom they are personally connected and vice versa. The evidence will be specified in secondary legislation.

Where one of the statutory prohibitions does not apply, the court will have discretion to make a direction prohibiting cross-examination in person, where it would affect the quality of the witness’s evidence or cause significant distress.

Where a party is prohibited from cross-examining in person, a court will have the power to appoint a legal representative to conduct the cross-examination on behalf of the party. A legal representative appointed by the court will be funded by the Department. There is provision for guidance to be issued in connection with the appointment of a legal representative by the court, to provide clarity about the role to courts, practitioners and parties.

SUPPLEMENTARY PROVISIONS

Clause 5 – Meaning of personal connection

Clause 5 is an interpretation provision. It defines two people as personally connected if they are or have been married to each other or in a civil partnership, or who live together or have been living together as if spouses. For those that are partners or are effectively a couple, but not living together or in a long term relationship, they would be covered by the term ‘intimate personal relationship’.

The clause also defines a family member as a parent, grandparent, child (or step-child), grandchild or sibling (including half-sibling) and makes provisions for these relationships in relation to each of the partners.

Clause 6 – Establishing connection by notice

Clause 6 provides that in relation to the matter of two individuals being personally connected the prosecutor may service notice proposing that this be taken as established, unless the personal connection is challenged. This applies to the domestic abuse offence under clause 6 and under clause 19 for the purposes of the aggravator.

The clause sets out the manner and timing in which a challenge must be raised, that is not later than the seventh day after the day of service, in writing, stating the reason for objection. The clause also recognises under special circumstances later objection in court is allowed.

Clause 7 – Service of notice on people

Clause 7 provides for the service of notices in relation to Clause 6 for the purpose of challenging that a relationship is to be taken as established. It states that notice will be served through hand, postal or, where agreed, electronic delivery to the accused or the accused's solicitor.

The clause also provides clarity in terms of what is meant by certain terms, for example electronic address and working day. It also outlines that in its application to service under this section, section 24(1) of the Interpretation Act (Northern Ireland) 1954 applies in regard to the reference in it to the person's usual or last known place of abode or business as if that were a reference to the person's proper address.

Clause 10 – Behaviour occurring outside the UK (Extra-territorial jurisdiction)

Clause 10 relates to extra-territorial jurisdiction. This provides that the domestic abuse offence can be constituted by a course of behaviour engaged by an accused occurring wholly or partly outside the United Kingdom when the accused is habitually resident in Northern Ireland, or is a United Kingdom national.

The clause outlines that proceedings may be taken in any place in Northern Ireland, and the offence may for incidental purposes be treated as having been committed in any place in Northern Ireland.

A “United Kingdom national” is defined as a person who is, as stated under the British Nationality Act 1981, a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject, or a British protected person.

Clause 11 – Exception where responsibility for children

Clause 11 provides that the domestic abuse offence would not apply where an individual has parental responsibility for an individual under the age of 18. It is considered in these instances that there are wider child protection provisions that should apply. This would not prevent the domestic abuse offence being aggravated where a child is present when the abuse is taking place or where use is made of that child to commit the domestic abuse offence through making use of the child to abuse the other person.

Clause 12 – Defence on grounds of reasonableness

Clause 12 provides that it is a defence to the domestic abuse offence 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 in order to protect the household

finances where their partner or a connected person is suffering from a gambling addiction, or to prevent their partner from associating with certain persons or frequenting certain places if they are recovering from alcohol or drug addiction. It may also apply where the freedom of movement of the accused's partner or a connected person is restricted for their own safety due to the effects of suffering from dementia. This relates to a test of reasonableness and each case will be informed and determined by the evidence presented.

The clause also provides that the accused may bring forward enough evidence to raise an issue as to whether the course of behaviour was reasonable, while the burden on the prosecution will be to disprove the defence offered and prove beyond reasonable doubt that the offence has been committed.

Clause 13 – Alternative available for conviction

Clause 13 provides that, where a charge is brought for the domestic abuse offence but the court is not satisfied that this has been committed, it is possible to convict the accused of a specified alternative offence. That the accused committed the alternative offence would have to be proved (to the normal criminal standard of proof). An alternative offence is either an offence of 'harassment' or 'putting people in fear of violence' as cited under Articles 4(1) and 6(1) of the Protection from Harassment (Northern Ireland) Order 1997. It is intended that in due course this could also include any stalking offence that is brought forward.

Clause 14 – Penalty for the offence

Clause 14 provides that the penalty for the offence is 12 months or a fine (or both) on summary conviction (that is at magistrate's court level) and 14 years or a fine (or both) on conviction on indictment (that is at Crown Court level). The higher sentence is intended to reflect the fact that the offence could incorporate physical and sexual violence as well as non-physically abusive behaviour.

Clause 17 – Exception regarding the aggravation

Clause 17 provides that the domestic abuse offence would not apply where someone has parental responsibility for an individual under the age of 18. It is considered in these instances that there are wider child protection provisions that should apply.

Clause 18 – Meaning of personal connection

Clause 18 is an interpretation provision and is similar to clause 5 in terms of defining personally connected and family.

Clause 19 – Establishing connection by notice

Clause 19 makes provision for establishing that two individuals are personally connected and is similar to the material set out at clause 6.

Clause 20 – Service of notice on people

Clause 20 makes provision for the service of notices in relation to clause 19 for the purpose of challenging that a relationship is to be taken as established. This is similar to the material set out at clause 7.

The clause also provides clarity in terms of what is meant by certain terms, for example electronic address and working day. It also outlines that in its application to service under this section, section 24(1) of the Interpretation Act (Northern Ireland) 1954 applies in regard to the reference in it to the person's usual or last known place of abode or business as if that were a reference to the person's proper address.

Clause 24 – Meaning of offence involving domestic abuse etc.

Clause 24 is a technical amendment relating to changes to the Criminal Evidence Order

1999, providing that an offence involving domestic abuse means both the domestic abuse offence and offences aggravated by reason of involving domestic abuse.

Clause 25 – Guidance about domestic abuse

Clause 9 stipulates that the Department of Justice will issue, and may revise, guidance in relation to the domestic abuse offence or any other matters as to criminal law and procedure relating to domestic abuse. Any guidance issued and revised must be published. A person exercising public functions whom the guidance relates to must have regard to it.

Clause 27 – Commencement

This clause makes provision in relation to commencement of the provisions, the majority of which will be by way of a Commencement Order.

Clause 28 – Short title

This simply provides for the short title of the Bill.