



Northern Ireland
Assembly

Committee for Justice

Report on the Domestic Abuse and Family Proceedings Bill

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Report: NIA 48/17-22 Committee for Justice.

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Powers and Membership

Powers

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Justice and has a role in the initiation of legislation.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Justice.

Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows

- Mr Paul Givan MLA (Chairperson)
- Ms Linda Dillon MLA (Deputy Chairperson)
- Mr Doug Beattie MLA

- Ms Sinéad Bradley MLA¹
- Ms Jemma Dolan MLA²
- Mr Gordon Dunne MLA
- Mr Paul Frew MLA
- Ms Emma Rogan MLA^{3, 4}
- Ms Rachel Woods MLA

¹ With effect from 26 May 2020, Ms Sinéad Bradley replaced Mr Patsy McGlone

² With effect from 16 March 2020, Ms Jemma Dolan replaced Mr Pat Sheehan

³ With effect from 17 February 2020, Ms Martina Anderson replaced Mr Raymond McCartney

⁴ With effect from 9 March 2020, Ms Emma Rogan replaced Ms Martina Anderson

List of Abbreviations and Acronyms used in the Report

Abbreviation/ Acronym	Full explanation of Abbreviation/ Acronym
BAME	Black, Asian and Minority Ethnic
Bar (the)	The Bar of Northern Ireland
Belfast DSVP	Belfast Area Domestic and Sexual Violence Partnership
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CJINI	Criminal Justice Inspection Northern Ireland
CLC	Children's Law Centre
COPNI	Commissioner for Older People NI
DAPN/O's	Domestic Abuse Protection Notice/ Order's
EA	Education Authority
ECHR	European Convention on Human Rights
EFM	Explanatory and Financial Memorandum
ICCR	Interfaith Centre on Corporate Responsibility
ICTU	Irish Congress of Trade Unions
LBT	Lesbian, Bisexual and Transgender
LGBT+	Lesbian, Gay, Bisexual and Transgender
MANi	Men's Alliance NI
MAP	Men's Advisory Project
MARAC	Multi Agency Risk Assessment Conference
NIACRO	Northern Ireland Association for the Care and Resettlement of Offenders
NICCY	Northern Ireland Commissioner for Children and Young People
NICCOSA	Northern Ireland Catholic Council on Social Affairs
NIHRC	Northern Ireland Human Rights Commission

Abbreviation/ Acronym	Full explanation of Abbreviation/ Acronym
NIWEP	Northern Ireland Women’s European Platform
NSPCC	National Society for the Prevention of Cruelty to Children
PBNI	Probation Board for Northern Ireland
PCS	Public and Commercial Services Union
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
SBNI	Safeguarding Board for Northern Ireland
SEDSVP	South Eastern Area Domestic and Sexual Violence Partnership
SEHSCT	South Eastern Health and Social Care Trust
SPO	Stalking Prevention Orders
UNCRC	UN Convention on the Rights of the Child
WPG	Women’s Policy Group

Executive Summary

1. This Report sets out the Committee for Justice's consideration of the Domestic Abuse and Family Proceedings Bill.
2. The Domestic Abuse and Family Proceedings Bill consists of 28 Clauses and its purpose is to improve the operation of the justice system by creating an offence that recognises the experience of victims, the repetitive nature of abusive behaviour and the potential cumulative effect of domestic abuse. It includes the creation of a new domestic abuse offence, two child aggravators associated with that offence, a statutory aggravation of domestic abuse associated with any other offence and a number of associated changes to criminal procedures, evidence and sentencing in domestic abuse related cases.
3. The Bill also protects victims of abuse from being cross-examined by perpetrators in person in family proceedings 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.
4. In addition to the main Clauses of the Bill, the Committee considered a number of proposed amendments brought forward by the Department covering a range of new proposals relating to the main aims of the Bill and to make minor, tidy up corrections.
5. The Committee requested evidence from interested organisations and individuals as well as the Department of Justice as part of its deliberations on the Bill and the proposed amendments.
6. 66 written submissions were received and the Committee held eleven oral evidence sessions with organisations as well as exploring the issues

raised in the written and oral evidence with Department of Justice and PSNI officials both in writing and in oral briefings. The Committee also met privately with a number of individuals to discuss their personal experiences of domestic abuse.

7. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered the Bill and Explanatory and Financial Memorandum and was satisfied with the rule making powers provided for in the Bill.
8. The Committee also sought legal advice in relation to an issue raised by the former Attorney General for Northern Ireland, Mr John Larkin QC, regarding legislative competence.
9. The Committee considered the provisions of the Bill and a number of proposed amendments at 17 meetings.

Key Issues Relating to the Clauses in the Bill

10. At its meeting on 1 October 2020 the Committee undertook its formal Clause by Clause consideration and agreed the Clauses in the Bill as drafted or as drafted with proposed departmental amendments to make a change to Clause 25 requested by the Committee and to make minor, tidy up corrections.
11. The Committee supported Clause 9 with the caveat that the Department of Justice amended the Explanatory and Financial Memorandum to provide greater clarity regarding 9(2) and that 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. One

Member, Ms Rachel Woods MLA, indicated that she was not content that this addressed her concerns regarding this Clause.

12. The Committee also agreed to bring forward six amendments at Consideration Stage. The amendments relate to interim protection for the victim, informing the school of a child who saw, heard or was present during a domestic abuse incident, training, guidance on data collection, independent oversight and reporting on the operation of the Act.
13. The Committee also supported a range of amendments proposed by the Department to introduce provisions to bring forward new proposals within the core themes of the Bill.
14. The Committee consideration of Clauses and key issues were raised as outlined below. Where a Clause is not covered the Committee agreed that it was content with the Clause as drafted.

Clauses 1 to 4 - The domestic abuse offence, what amounts to abusive behaviour, impact of behaviour on victim and meaning of behaviour etc.

15. Clauses 1 to 4 of the Bill provide for a new offence of domestic abuse, sets out what constitutes abusive behaviour for the purpose of the offence, sets out the required impact on a victim and explains what is meant by behaviour for the purposes of the offence.
16. There was overwhelming support for the legislation and the creation of the new offence amongst those organisations and individuals who provided evidence to the Committee with views expressed that the new offence reflects the current reality of how abuse is experienced and will provide the Police Service of Northern Ireland (PSNI) and Public

Prosecution Service (PPS) with the ability to prosecute perpetrators for the more subtle forms of controlling behaviours which had previously fallen short of a criminal offence.

17. A number of specific issues were raised, particularly in relation to how the new offence was framed, whether a definition of domestic abuse should be included in the Bill, how abusive behaviour is defined and what it covers, the fact that it is not necessary to prove that the effects of the abusive behaviour actually cause harm, what protection is provided for children who suffer domestic abuse and the particular circumstances of migrant victims of domestic abuse.
18. The Committee explored the issues raised in more detail during the oral evidence sessions with organisations and in writing and during oral evidence sessions with Department of Justice officials. The Committee also took account of the views of the two criminal justice bodies responsible for applying the new law, the PPS and the PSNI.
19. The Committee also received powerful and persuasive evidence that for many victims the psychological impact of domestic abuse can be more debilitating than physical injuries and the behaviours are manipulative, subtle and at times covert.
20. The Committee considers that the current law does not adequately recognise that domestic abuse is not limited to physical violence and believes that the new offence addresses gaps in the legislation, captures domestic abuse in all its myriad forms, will enable more effective action to be taken against perpetrators and will enhance the protection and access to justice provided to victims by the criminal justice system. It will also provide an opportunity to raise awareness of the existence and unacceptability of psychological abuse and in the longer term assist in

changing societal attitudes towards domestic violence and abuse which should never be excused or tolerated.

21. The Committee agreed that it is content with Clauses 1 to 4 of the Bill and an amendment proposed by the Minister of Justice to introduce a new Clause to amend Article 12A of the Children (Northern Ireland) Order 1995 as a consequence of the new domestic abuse offence so that a court considering an application for contact or residence order will be specifically required to have regard to the conviction of the party applying for the order for the new domestic abuse offence (or another offence) where the child aggravator has been applied.

Clauses 5 and 18 - Meaning of Personal Connection

22. Clauses 5 and 18 define personally connected and family for the purposes of the offence.
23. While the definition of personally connected was largely welcomed, particularly the inclusion of children and familial violence, issues were raised regarding whether the definition was too wide and could have unintended consequences, exactly what relationships were covered by the definition and whether other relationships should also be covered by the definition.
24. Having considered the issues raised and the assurance provided by Department of Justice officials that the clauses as drafted would not have the unintended consequences of criminalising normal family disagreements which clearly should not fall within the scope of the offence, the Committee agreed that it is content with Clauses 5 and 18 as drafted.

Clause 8 - Aggravation where victim is under 18

25. Clause 8 provides for aggravation of the domestic abuse offence, where the person in the relationship is under the age of 18.
26. In general the aggravator Clauses in the Bill were welcomed by the organisations who submitted evidence.
27. The key issues raised in relation to Clause 8 included the need to ensure that young people are not punished unduly harshly just because they may be more likely to be in a relationship with another young person, whether other vulnerabilities should also be considered as aggravating factors and the need for a full review of the family courts.
28. In considering Clause 8, the Committee noted that in other jurisdictions the number of young people charged with an offence had been low. The Committee also sought further information regarding the implementation of the Gillen Review in relation to contact orders and child arrangements in the context of domestic abuse.
29. The Committee agreed that it is content with Clause 8, subject to a minor technical amendment proposed by the Minister of Justice.

Clause 9 - Aggravation where relevant child is involved

30. 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 abuse offence).
31. While the aggravator provided by Clause 9, and in particular 9(2)(b) which covers where a child sees, hears or is present during a single incident of the abuse, was welcomed by a range of organisations, others

expressed concern that the wording did 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.

32. The Committee requested further information regarding whether the aggravator would apply in a situation where a child does not directly witness the abuse and on the Department's rationale for adopting a different approach to the Scottish legislation with regard to this Clause.
33. The Committee also discussed the wording of Clause 9, and in particular Clause 9(2) extensively with departmental officials. The Committee was concerned that while there is an assumption in the Clause that harm has been done with reference to 'seeing, hearing or being present during... ', that is not specific or clear enough. Noting the wording of Clause 5 subsection 5 of the Scottish legislation which stated that "for it to be proved that the offence is so aggravated there does not need to be evidence that a child had ever had any awareness of or understanding of A's behaviour or been adversely affected by A's behaviour" the Committee was of the view that, to ensure effective enforcement and prosecution, the wording of Clause 9 needed to be strengthened to reflect this position much more clearly. The Committee proposed amending the Clause, either by adopting the Scottish wording unless there was any specific reason not to use that wording, or wording that provides the same sort of clarity, and sought confirmation regarding whether the Minister was content to bring forward an amendment on that basis. The Committee also decided to seek advice on its own possible amendment.
34. Following the receipt of further information from the Department regarding the construction of the provision in the Domestic Abuse (Scotland) Act 2018 and the construction of Clause 9 the Committee noted that the Department did not consider that an amendment akin to

the Scottish legislation was needed. The Committee was still minded to amend the Clause and sought the views of the Department on the text of a draft amendment including whether there were any implications if it was added to the Clause and what value it would bring to it. The Committee also asked the Department whether it would consider providing greater clarity in relation to Clause 9 in the Explanatory and Financial Memorandum to address its concerns.

35. The Department, having considered the draft amendment, indicated that it would introduce an unrelated adverse affect provision, which is unnecessary and would add nothing to the Clause and it could risk giving rise to confusion by casting doubt on the effectiveness of it. It would therefore not support the proposed amendment.
36. Following further discussions, the Department informed the Committee that it was proposing to remove the reference in the Explanatory Note at 9(2)(a)(ii) and insert text at the end of the part related to subsection 9(2) more generally to read “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.”
37. With the caveat that the Department amends the Explanatory Note as outlined to provide greater clarity in relation to 9(2) the Committee agreed that it is content with Clause 9 as drafted. Ms Woods MLA indicated that she was not satisfied that this addressed her concerns regarding this Clause.

Clause 10 - Behaviour occurring outside the UK

38. While this provision was welcomed by a number of organisations the key issue raised in relation to Clause 10 was by the previous Attorney General for Northern Ireland, Mr John Larkin QC, who was concerned that the Clause appeared to penalise acts occurring outside Northern Ireland that are not criminalised in the country in which they take place and, by virtue of Section 6(2)(a) 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.
39. Mr Larkin, indicated that, in his view, in providing for penal consequences for behaviour, Clause 10 operates to 'form part of the law' of the country in question and 'forming part of the law' is a broad concept, not restricted to formally or explicitly altering that country's statute. By making behaviour criminal in territory where that behaviour is not otherwise criminal offends against the limitation of the Assembly's competence.
40. To assist consideration of this issue the Committee discussed Mr Larkin's concerns further when he provided oral evidence to the Committee in June 2020. The Committee also asked the Minister of Justice to outline her position on the matter and commissioned its own legal advice from Assembly Legal Services.
41. The Minister advised the Committee that she and officials had given extensive consideration to this issue over recent months and had held discussions with both Legislative Counsel and senior legal advisers.
42. The Minister outlined that the Northern Ireland Act 1998 prohibits an Assembly Act from forming part of the law in another country but does not prohibit extra territorial provision in the sense of application as distinct from extent, so long as such provision sounds only as a matter of

Northern Ireland law. The Minister confirmed that she considered that it is within the legislative competence of the NI Assembly to create an offence under Northern Ireland law even where the criminal conduct occurs outside Northern Ireland. In relation to behaviour in another country that contributes to the domestic abuse offence in Northern Ireland, individuals will not be penalised in that country or by its authorities even if they are penalised in Northern Ireland.

43. The Minister indicated that it is not considered that the Clause forms part of the law of another country or confers functions other than in or as regards Northern Ireland. The Minister also highlighted other pieces of legislation, with a similar construct to this provision, which Ministers, the Executive and the Assembly have approved and which are deemed to be within the legislative competence of the Assembly.
44. The Committee noted that the issue of Assembly competence had been robustly considered on a number of occasions, in conjunction with legal advisers and Legislative Counsel, who are satisfied that Clause 10, is within the legislative competence of the Assembly.
45. Taking into account the assurances provided by the Minister of Justice and its own legal advice on the matter, the Committee is content with Clause 10, subject to the minor technical amendment proposed by the Minister of Justice.

Clauses 11 and 17 - Exception where responsibility for children and Exception regarding the aggravation

46. 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. Clause 17 provides that the domestic abuse offence would not

apply where someone has parental responsibility for an individual under the age of 18.

47. Two main issues were raised by organisations in relation to these Clauses. The first was the exclusion of children from the statutory definition of the offence itself and the second was whether existing children's legislation provided adequate protection for child victims of non-physical abuse.
48. The Committee discussed the child related issues in more depth with the NSPCC and Barnardo's NI during the oral evidence session on 18 June 2020.
49. The Committee subsequently requested further information from the Department on why a child is not considered a victim in its own right in the Bill, to what extent a proposed amendment to child protection provisions contained in health legislation would address this and the position in relation to multiple children in a home. The Committee also indicated that it wanted sight of the text of the amendment referred to by the Department at the earliest opportunity to assist its consideration of Clauses 11 and 17.
50. The Department confirmed to the Committee that it had given 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.

51. The Department also outlined that the proposed amendment to current child protection legislation was around an offence of ill treatment of a child so that it explicitly states that ill treatment can be physical or otherwise. The purpose of this would be to ensure that non-physical ill treatment of a child, by someone with parental responsibility for them, is criminalised. It would also ensure that current references to an offence around unnecessary suffering or injury to health would also explicitly state that this relates to the suffering or injury being of a physical or psychological nature, again ensuring that non-physical behaviour is captured. This should enable matters such as isolation, humiliation, bullying etc. to be captured.

52. When the Department provided the text of the proposed amendment to the Child Cruelty Offence in Section 20 of the Children and Young Persons Act 1968 it advised that the child cruelty offence only applies to those under the age of 16. It had consulted with colleagues in the Department of Health and the PSNI and was not aware of similar child protection provisions that could easily be adjusted to explicitly deal with non-physical ill treatment of those aged 16 and 17 in the context of a parent-child relationship. To ensure that non-physical abuse of 16 and 17 year olds in a parent-child relationship is clearly provided for in legislation the Department was considering reducing the age threshold for the parental responsibility exclusion from under age 18 to under age 16 in Clauses 11 and 17. In the absence of this there is the possibility that it may not be possible to address the non-physical ill treatment of those aged 16 and 17 in this context.

53. The Department outlined that the standard offence thresholds would apply, insofar as any behaviour would have to be considered to be abusive, be viewed as such by a reasonable person and occur on two or more occasions. It also highlighted that the parental responsibility

exclusion in England and Wales is also 16, and had not given rise to difficulties there and it could be considered appropriate in that it is linked to a range of age-specific permissions e.g. school leaving age, age at which a person can live on their own, ability to work in a licensed premises, getting married or joining the armed forces with parental consent. Furthermore, any decision to charge an individual with the offence would be dependent on the particular circumstances of the case and the reasonable person defence would also apply.

54. While concerned about the gap that the amendment to the child cruelty offence would create, assuming it was made, the Committee viewed the Department's proposed remedy as a significant change and did not believe that it was in a position to clearly understand any implications or consequences of making it without having the views of key stakeholders. To assist the Committee, the officials sought the views of the NSPCC and the Northern Ireland Commissioner for Children and Young People (NICCY) on the proposal. Both organisations remained of the view that children should be wholly captured within the domestic abuse offence and the parental responsibility exclusion should not apply. They did not comment directly on the proposal to reduce the age threshold.
55. Acknowledging that child protection legislation falls to the Department of Health, the Committee considered whether to support the amendment to the child cruelty offence that would address the issue of non-physical ill treatment or injury to a child under the age of 16, but would create a gap for 16 and 17 year olds unless the Department's proposed approach to reduce the age threshold for the parental responsibility exclusion from under age 18 to under age 16 in Clauses 11 and 17 was adopted.
56. The Committee agreed that it is content with Clauses 11 and 17 as drafted. The Committee also agreed to support the amendment proposed

by the Minister of Justice to add a new Clause to the Bill to amend the Child Cruelty Offence in Section 20 of the Children and Young Persons Act 1968.

57. The Committee indicated that it did not have enough time or sufficient information to properly consider the Department's proposed amendments to Clauses 11 and 17 and therefore noted them. The Committee expects the Department to ensure that the gap created for 16 and 17 year olds, assuming the amendment to the child cruelty offence is made, is fully addressed. The Committee will consider any further information provided by the Department on the implications or consequences of its proposed remedy and any other options to address the issue.

Clause 12 - Defence on grounds of reasonableness

58. Clause 12 provides that it is a defence for the accused to show that the course of behaviour was in the particular circumstances, reasonable.
59. Those operating in the criminal justice field and a number of other organisations supported the inclusion of this defence in the legislation and believed that it was framed appropriately. Substantial concerns were however raised by a wide range of organisations that this defence is open to manipulation by perpetrators. Many of those who work with and support victims of domestic abuse are opposed to this provision and want it removed completely from the Bill. Others have raised concerns that the wording of the Clause is not specific enough and have highlighted the need for robust safeguards and the provision of guidance to the criminal justice agencies to ensure the provision is used as intended.
60. Given the significant concerns raised by a wide range of organisations, the Committee spent some time discussing this provision during the oral

evidence sessions with organisations and considering the range of information and clarification provided by the Department on how it expects the defence to work in practice. The Committee also commissioned a research paper on the use of a similar reasonableness defence in other jurisdictions to assist its assessment, and took the opportunity to seek the views of the previous Attorney General for Northern Ireland, Mr John Larkin QC, on the proposed defence when he gave oral evidence on the Bill on 18 June 2020.

61. While some Members have their own reservations, the Committee accepted that, given the scope of the offence and the wide personal connection, the Clause provides a necessary balance to the Bill. The Committee noted that those working in the criminal justice system have not raised any issues in relation to the defence and view it as a familiar concept in criminal law and the fact that it appears to work as it should in the other jurisdictions also provided some level of reassurance.
62. In the absence of an alternative approach to provide the necessary balance in the legislation and noting the clearly stated views of the Department, set out in both its written and oral evidence, regarding how this defence should work and the need for it, including its assertion in its letter dated 18 May 2020 that “it is not considered that the defence provision will provide a charter to harm vulnerable people and would not cover deliberately harmful behaviour” the Committee agreed to support Clause 12 as drafted.
63. The Committee expects the Department to closely monitor the use of this defence to ensure that the concerns expressed in the evidence received are not realised. If there is any indication that the defence is being manipulated by perpetrators or is providing a ‘loophole’ for abusive behaviour the Department must take swift action to provide a remedy.

Clause 13 - Alternative available for conviction

64. 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.
65. The Committee sought further information and clarification on why this Clause is necessary, how it would work in practice and the implications if it were removed from the Bill. The Committee also raised concerns that the wording of the Clause did not clearly reflect the explanation of the purpose of the Clause as outlined by officials and asked the Department to reflect on how it could be enhanced to provide greater clarity.
66. In light of the further information and the action to be taken by the Department to amend the Explanatory and Financial Memorandum to enhance the description of this offence to provide greater clarity the Committee agreed that it is content with Clause 13 subject to a technical amendment proposed by the Minister of Justice.

Clause 14 - Penalty for the Offence

67. Clause 14 provides for the penalties associated with the new offence.
68. While there was widespread support for the penalties provided in Clause 14 issues relating to the need for sentencing guidelines, other options for disposal of domestic abuse cases and the handling of cases involving children were raised.
69. The Committee supports the penalties which reflect the nature of the new domestic abuse offence and the fact that it may cover psychological and

physical abuse. The Committee believes that the penalties demonstrate the seriousness with which the crime of domestic violence and abuse is viewed and sends a message to the perpetrators, the victims and the general public in Northern Ireland that such crimes are not acceptable and will not be tolerated. The Committee agreed to support Clause 14 as drafted.

Clauses 15 and 16 - Aggravation as to domestic abuse and what amounts to the aggravation

70. There was general widespread support for the aggravator Clauses in the evidence received on the Bill.
71. The Committee agreed that it is content with Clauses 15 and 16 as drafted.

Clause 22 - Special Measures Directions

72. 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.).
73. While supportive of this Clause issues raised included the need for special measures in family and civil proceedings, the need to ensure that special measures when granted are actually delivered, and the Barnahus approach to support child victims.
74. The Department advised the Committee that it was 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. It was 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. The Department subsequently provided the text of the amendments.

75. The Committee agreed that it is content with Clause 22 as drafted. The Committee also agreed to support the amendments proposed by the Minister of Justice to add two new Clauses to the Bill to provide for court rules for special measures in family proceedings and for special measures in civil proceedings.

Clause 25 - Guidance about domestic abuse

76. Clause 25 stipulates that the Department of Justice may 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.
77. The Committee questioned the wording of the Clause and the use of 'may issue' rather than 'must issue' and sought further information on the timescale for the guidance, if it would be periodically reviewed and whether the requirement for reviews should be included in the Bill.

78. Having considered the Department's response the Committee believed that it would be better for the Clause to state 'will or must' issue guidance given the importance of it to the implementation of this new offence and agreed that a draft amendment should be prepared for consideration.
79. The Department subsequently advised the Committee that the Minister had agreed to change the word 'may' to 'must' and provided the text of the proposed amendment.
80. The Committee agreed that it is content with Clause 25 subject to the amendment proposed by the Minister of Justice and the Committee's own amendment to enable the Department to make, by way of Regulations, provision for informing the school of a child who saw, heard or was present during a domestic abuse incident (details of this amendment are set out at paragraph 101 of this Executive Summary).

Clause 26 - Prohibition of cross-examination in person

81. Clause 26 inserts a 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.
82. This Clause was broadly welcomed in the evidence received, with organisations highlighting that cross-examination of the complainant by the defendant is a key reason why many complainants disengage from court proceedings and it has allowed the continued control and abuse of victims, diminished their ability to give evidence and causes trauma and distress.

83. The Committee sought clarification from the Department regarding the automatic prohibition to apply where there is other specified evidence of domestic abuse and the Department outlined that the other types of evidence would be specified in Regulations and a consultation on which types of evidence should lead to an automatic prohibition would be undertaken.
84. The Department also advised the Committee it was considering a proposed amendment to provide for a court hearing civil proceedings to have a discretionary power to prohibit cross-examination in person. The new provision would broadly replicate for civil proceedings the provision in Clause 26 giving a court hearing family proceedings a discretionary power to prohibit cross-examination in person if certain conditions are met. The proposed amendment would be limited to a judicial discretion rather than including any automatic ban due to the much broader types of case that come within the scope of civil proceedings. The new provision would also give a court hearing civil proceedings the power to appoint a legal representative funded by the Department to carry out the cross-examination instead and guidance would be issued about the scope and nature of their role in proceedings.
85. The Committee agreed that it is content with Clause 26 subject to a minor amendment proposed by the Minister of Justice to require a court considering whether to exercise its discretionary power to prohibit cross-examination in person to have regard to findings of fact made in civil or criminal proceedings as well as family proceedings. The Committee also agreed to support the amendment proposed by the Minister of Justice to add a new Clause to the Bill to provide for a court hearing civil proceedings to have a discretionary power to prohibit cross-examination in person.

Implementation of the Legislation

86. One of the consistent themes running through the evidence received by the Committee related to the importance of how the legislation will be implemented.
87. The Committee believes that, for this legislation to be effective and achieve the desired result of better protection and criminal justice outcomes for victims of domestic violence and abuse, getting the implementation right in terms of training, monitoring, reporting and public awareness is crucial.
88. The Committee therefore intends to bring forward three amendments to provide for the effective implementation of the legislation.
89. The first amendment places a requirement on the Department of Justice to report on the operation of the offence. This will provide for the effectiveness of the legislation to be monitored and assessed in a transparent manner.
90. The amendment will require the Department to report on the operation of the domestic abuse offence and the aggravating factors provided for in Clauses 8, 9 and 15 in a range of areas including number of cases taken, number of convictions, the average length of time for cases, the experiences of witnesses, the provision of the guidance under Clause 25 and the communication strategies to raise public awareness. The first report must be available no more than two years after the commencement of the legislation and the report must be laid in the NI Assembly and published. Further reports are required no less than every three years.

91. The second amendment provides for the Department to issue guidance on the type of data needed to enable the effectiveness of this legislation to be assessed. The Committee recognises the importance of the availability of robust data. The data will also need to be consistent across the various criminal justice agencies to allow for tracking of cases and analysis at each stage of the process and to enable the Department to fulfil its duty to report on the operation of the offence.

92. The third amendment relates to training for those involved in the prosecution and enforcement of the new law. The Committee views training for the PSNI, PPS and judiciary as crucial to the effective implementation of this legislation given the new offence is a course of behaviour offence which will require the exercise of judgement by the police when gathering evidence and a clear understanding and recognition of the behaviours associated with non-physical abuse for others involved in the prosecution and enforcement of the new law. The Committee believes that, given its importance to the effective operation of the legislation, there should be a mandatory requirement in relation to training and agreed to bring forward an amendment in this regard.

93. While recognising that the Lord Chief Justice holds responsibility for the arrangements for training of the judiciary of Northern Ireland and therefore inclusion of the judiciary in the amendment would not be appropriate, the Committee would emphasise the need for awareness raising and training for the judiciary in relation to the new offence and would encourage the Department to continue to discuss this with the Judicial Studies Board.

94. The Committee is of the view that raising public awareness and recognition of the new offence will be very important and it welcomes the work the Department intends to undertake in this area.

95. While legislation in this area is not required the Committee has included a requirement for the Department to report on the strategies to communicate the new offence to the public and victims as part of its reporting obligations on the operation of the offence.

Other Issues not covered in the Bill

96. A wide range of other issues relating to the offence of domestic abuse and the provision of support and assistance to victims that are not currently covered in the Bill were raised in the evidence received by the Committee. Some of those issues fall within the responsibilities of Ministers other than the Minister of Justice.
97. The distinct criminal justice purposes of the Domestic Abuse and Family Proceedings Bill limits the opportunity to take many of these forward in this legislation. However, the Committee intends to continue to make domestic abuse one of its priority areas of work and will pursue these issues and monitor the position on each of them on a regular basis. There may well be other legislative opportunities in this mandate to address some of the issues if the Committee believes that sufficient progress has not been made.
98. The Committee agreed to bring forward three amendments relating to Domestic Abuse Prevention Notices and Orders (DAPN/O's), to provide for independent oversight of and reporting on the implementation of the legislation and to provide legislative provision to enable the PSNI to share information with a school on welfare/well-being grounds to support children in the context of domestic abuse.

99. The Committee recognises the benefits of DAPN/O's in terms of providing short term protection to victims and noted that the Criminal Justice Inspection NI (CJINI) Thematic Inspection Report of the handling of domestic violence and abuse cases by the Criminal Justice System in NI in 2019 urged progress on the issue of protection notices.
100. The Committee supports the introduction of DAPN/O's and understands there is a need to develop the policy in this regard and identify the most appropriate option for Northern Ireland. However, the Committee is concerned about the length of time Northern Ireland has already been without any form of these protection notices and does not find any reassurance in the fact that legislative provision for such notices is only going to be advanced during the progression of the proposed Justice Miscellaneous Provisions Bill. The Committee therefore agreed to bring forward an amendment to place a duty on the Minister to provide for a scheme within 24 months of commencement of this legislation.
101. The Committee is very supportive of the introduction of the type of information sharing scheme to Northern Ireland that is covered by Operation Encompass in England and believes that legislative provision to enable the PSNI to share information with a school on welfare/well-being grounds to support children in the context of domestic abuse should be provided at the earliest opportunity. The Committee therefore intends to bring forward an amendment to provide for the Department, by way of Regulations, to make provision for informing the school of a child who saw, heard or was present during a domestic abuse incident.
102. The Committee appreciates the benefits that a stand-alone Domestic Abuse Commissioner could bring, particularly in providing independent oversight of the implementation of this legislation, contributing to the

development of the guidance and training, advocating on behalf of victims and monitoring and evaluating the provision of services. The Committee is sympathetic to the calls for the appointment of a Domestic Abuse Commissioner however one Member, Mr Doug Beattie MLA, indicated that his preference was for a Victims' of Crime Commissioner.

103. The Committee agreed that an amendment should be prepared to establish a Commissioner for Domestic Abuse. Following further consideration and advice the Committee decided not to take forward this amendment given the constraints relating to the purposes of the Bill.
104. The Committee therefore agreed to bring forward an amendment to provide for independent oversight of and reporting on the implementation of the legislation for a period of at least seven years. The amendment requires the Department of Justice to appoint an independent person within one year of commencement of the legislation.
105. At its meeting on 15 October 2020 the Committee agreed its report on the Domestic Abuse and Family Proceedings Bill and ordered that it should be published.

Introduction

Background to the Bill

1. The Domestic Abuse and Family Proceedings Bill was introduced to the Northern Ireland Assembly on 31 March 2020 and was referred to the Committee for Justice for consideration in accordance with Standing Order 33 (1) on completion of the Second Stage of the Bill on 28 April 2020.

2. At introduction the Minister of Justice made the following statement under section 9 of the Northern Ireland Act 1998:

'In my view the Domestic Abuse and Family Proceedings Bill would be within the legislative competence of the NI Assembly'

3. The purpose of the Bill is to improve the operation of the justice system by creating an offence that recognises the experience of victims, the repetitive nature of abusive behaviour and the potential cumulative effect of domestic abuse. It includes the creation of a new domestic abuse offence, two child aggravators associated with that offence, a statutory aggravation of domestic abuse associated with any other offence, and a number of associated changes to criminal procedures, evidence and sentencing in domestic abuse related cases.

4. The Bill also protects victims of abuse from being cross-examined by perpetrators in person in family proceedings 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.

5. The Bill contains 28 Clauses and is divided into 3 parts:

Part 1 deals with domestic abuse (an offence and aggravation)

Part 2 deals with cross-examination in family proceedings

Part 3 deals with commencement and the short title of the Bill

Committee Approach

6. The Committee took oral evidence from Department of Justice officials on the principles of the Bill on 2 April 2020, following its introduction to the Assembly.
7. In addition to publishing a media sign posting notice in the Belfast Telegraph, Irish News and Newsletter seeking written evidence on the Bill, the Committee wrote to a wide range of key stakeholders inviting views. In response to its call for evidence the Committee received 66 written submissions along with a number of submissions from individuals. Copies of the written submissions are included at Appendix 3.
8. The Committee also agreed a social media strategy to raise awareness of and engage with the public via social media to encourage participation in the Committee Stage of the Bill. Four social media platforms (NI Assembly Blog, Facebook, Twitter and Instagram) were used to disseminate information on the Bill using text, graphics and a video.
9. During the period covered by this report the Committee considered the Bill and related issues at 18 meetings. The Minutes of Proceedings are included at Appendix 1.
10. The Committee had before it the Domestic Abuse and Family Proceedings Bill (NIA 3/17-22) and the Explanatory and Financial Memorandum that accompanied the Bill.

11. At its meeting on 14 May 2020, the Committee agreed a motion to extend the Committee Stage of the Bill to 15 October 2020. The length of the extension reflected the Committee's desire to progress the legislation speedily but ensure enough time was available for robust and detailed scrutiny. The motion to extend was supported by the Assembly on 2 June 2020.
12. The Committee held 11 oral evidence sessions with a range of key stakeholders and organisations including the Women's Aid Federation, Victim Support NI and the Men's Advisory Project (MAP). The Minutes of Evidence are included at Appendix 2 and a list of witnesses who gave oral evidence is at Appendix 8.
13. In addition to the oral evidence sessions, Members met privately with a number of individuals to discuss their personal experiences of domestic abuse.
14. The Committee would like to place on record its thanks to all the organisations who responded in writing and provided oral evidence and in particular the individuals who shared their experiences.
15. The written and oral evidence highlighted widespread support for the introduction of a new domestic abuse offence and the protections for victims in cases in the criminal courts. It also raised a number of issues relating to the framing of the offence, the provision of a 'reasonable defence' and how children are protected in the Bill and drew attention to a number of gaps in the legislation and support services for domestic abuse victims and survivors. The evidence also highlighted a range of issues not currently covered in the Bill.
16. The Committee sought clarification and further information on a range of issues from a number of key stakeholders including the PSNI, the

Minister for the Economy, the NI Policing Board and the Department for Communities.

17. The Committee explored the issues with the Department both in writing and in oral evidence sessions. Memoranda and papers from the Department of Justice on the provisions of the Bill and proposed amendments are at Appendix 4.
18. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered the Bill and Explanatory and Financial Memorandum and was satisfied with the rule making powers provided for in the Bill.
19. The Committee also sought legal advice on a legislative competence issue in relation to Clause 10 of the Bill raised by the former Attorney General for Northern Ireland, Mr John Larkin, QC.
20. To assist consideration of specific issues highlighted in the evidence the Committee commissioned three research papers from the NI Assembly Research and Information Service on Information Sharing between Police Forces and the Home Office, the Defence on Grounds of Reasonableness and on Domestic Abuse Commissioners.
21. The Committee carried out informal deliberations on the Clauses of the Bill at its meetings on 10, 17 and 24 September 2020 and undertook its formal clause by clause scrutiny of the Bill on 1 October 2020.
22. At its meeting on 15 October 2020 the Committee agreed its report on the Domestic Abuse and Family Proceedings Bill and ordered that it should be published.

Consideration of the Provisions of the Bill

23. The Domestic Abuse and Family Proceedings Bill contains 28 Clauses and is divided into three parts.
24. Part one of the Bill deals with domestic abuse (an offence and aggravation) and is separated into three chapters.
25. Part two of the Bill deals with cross-examination in family proceedings.
26. Part three of the Bill deals with commencement and the short title of the Bill.

Context of the Legislation

27. Domestic abuse accounts for a significant proportion of overall crime in Northern Ireland. PSNI statistics show that in the 12 months from 1 January 2019 to 31 December 2019 there were 31,705 domestic abuse incidents recorded in Northern Ireland including 18,033 domestic abuse crimes which is the highest of any 12-month period recorded since 2004/05. The number of crimes has increased by 14.8% on the previous 12 months. Domestic abuse crimes made up 16.9% of all police recorded crime. These figures only reflect the incidents reported - many more are never brought to the attention of the authorities.
28. Cases involving domestic abuse generally account for nearly 20% of the PPS caseload each year and in the past financial year the PPS has issued just over 8,000 decisions in cases involving domestic abuse.
29. More recently during the Covid-19 lockdown, domestic violence and abuse incidents reports to police increased by around 15% compared to calls for the same period in the previous year.
30. Many of the organisations that responded to the Committee's call for evidence highlighted that Northern Ireland has lagged behind the rest of the UK and Ireland in respect of legislation to tackle domestic abuse and wants this situation rectified as soon as possible.

Response to Call for Evidence

31. In response to its call for evidence, the Committee received 66 written submissions from a wide range of organisations and individuals and took oral evidence from 14 organisations. The Committee also met in private with a number of individuals to discuss their experiences of domestic abuse. The Committee appreciates the time, effort and care that was taken to submit the evidence which encompasses a wide range of issues relating to domestic violence and abuse, some of which are covered by the provisions of this Bill and others which will require further legislative provision or relate to operational issues. The Committee has used the evidence to undertake detailed scrutiny of the provisions in this Bill and will continue to draw upon it when monitoring and scrutinising other domestic abuse related issues that come before it in the future.
32. While there was widespread support for the introduction of a new domestic abuse offence and the protections for victims during cases in the criminal courts, the written and oral evidence raised a number of issues, particularly in relation to the framing of the offence, the provision of a 'reasonableness defence', and the protections afforded to children, and also highlighted a number of gaps in the legislation.
33. The Committee explored the issues raised in further detail in oral evidence sessions with a range of organisations. The Committee also sought further information and clarification from the Department of Justice both in writing and in oral evidence sessions and from other organisations.

Clauses 1 to 4

34. Clauses 1 to 4 provide for a new offence of domestic abuse, sets out what constitutes abusive behaviour for the purpose of the offence, sets out the required impact on a victim and explains what is meant by behaviour for the purposes of Clause 1.

The Construct of the New Offence

35. In general terms the new domestic abuse offence will capture patterns of psychological and emotionally abusive 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.
36. The provisions will make it a criminal offence for a person to engage in a pattern of behaviour 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 will 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.
37. As set out by the Department of Justice in its letter to the Committee dated 12 March 2020:

“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. 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 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 sets out what constitutes abusive behaviour for the purpose of the offence. Given 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, the offence has been framed to reference a range of effects the behaviour might have though not be limited to this. It 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).

The 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, email 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 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 cause 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 a situation 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 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. 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 provides for the way in which the behaviour can be carried out, that is behaviour by the accused either directly towards their partner (or 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.

This Clause also provides that behaviour directed at a person includes behaviour carried out with or through a third party. 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.

The Clause 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.”

Support for the legislation and the new offence

38. There is overwhelming support for the legislation and the creation of the new offence amongst those organisations and individuals who provided evidence to the Committee including those organisations supporting female, male and LGBT+ victims of domestic abuse, from organisations working with children and young people including the NICCY, from the NI Human Rights Commission (NIHRC), from criminal justice bodies and those working with offenders, from the Commissioner for Older People (COPNI), from church representatives, from Assembly Committees and other NI Departments and from individuals who contacted the Committee. Examples of the views received are outlined below.
39. Women's Aid Federation and the wide range of women's organisations who responded to the call for evidence welcomed the domestic abuse offence, with Women's Aid Federation highlighting that they have campaigned for many years for the introduction of an offence for coercive and controlling behaviour which they believe will lead to a criminal justice system that more accurately reflects the reality of domestic violence and abuse. They see the benefits of the new offence as giving the police the tools to arrest and charge perpetrators; tackling serial perpetrators and changing how we talk about domestic violence.
40. MAP also welcomed the new offence and in particular the gender neutral language used and is supportive of the fact that the offence can

be deemed to have been committed regardless of whether the behaviour has been proven to have had an effect, expressing the view that the act of carrying out the abusive behaviour should be enough without proving the abuse had an impact.

41. Nexus NI is content that the Bill is not gender specific and covers female and male victims, recognising that anyone in society can be a victim of domestic abuse and Belfast Area Domestic and Sexual Violence Partnership (Belfast DSVP) was pleased to see that male victims and victims of same sex relationships are recognised within the Bill as well as the issue of familial violence which it highlighted is a dynamic that they are seeing more and more of.
42. Victim Support NI noted that “victims of domestic abuse have waited for many years for a law to be put in place which reflects the reality of the abuse they have suffered. Until now, the law has mainly dealt with domestic abuse as individual incidents with no relation to each other, and no understanding that these incidents, in combination have a much greater impact on victims than the individual sum of their parts. It is long overdue for this legislation to be put in place...”
43. It also supports the framing of Clause 3 and that the offence can be deemed to have been committed regardless of whether the behaviour has been proven to have had a particular effect. It agrees with MAP’s view that proof of the act of carrying out the abusive behaviour should be sufficient without also having to prove beyond reasonable doubt that the abuse had a particular impact. The inclusion of intentional omissions or failure to do something, as provided for in Clause 4, is also vital.
44. HERe NI/ Cara-Friend welcomes the legislation, noting that domestic abuse legislation for Northern Ireland is long overdue and the Rainbow Project is particularly pleased with the inclusion of coercive control and familial violence highlighting that LGBT people can experience particular forms of domestic abuse within the family, whether from parents, siblings or other relatives.
45. Relate NI believes that the scope of this offence reflects the current realities of how abuse is experienced and particularly welcomes the ‘reasonable person’ test as a means of adjudicating whether or not an offence has been committed and the definitions to recognise that third

parties, including children and family members, can be involved in behaviours to harm the victim.

46. The Migrant Centre NI also welcomes the legislation, viewing it as an opportunity to better protect and support victims of domestic abuse.
47. CJINI highlighted that its Report 'No Excuse: A thematic inspection of the handling of domestic violence and abuse cases by the Criminal Justice System in NI', which was published in June 2019, found that a domestic abuse offence was seen as a 'critical mechanism for officers in dealing with coercive and controlling behaviour which was not sufficiently accounted for in current offences'.
48. The Probation Board for Northern Ireland (PBNI) welcomed the recognition that an offence can be committed regardless of whether harm was actually caused and that the provisions of the Bill will apply where the behaviour of the alleged perpetrator was intentional, or reckless to its effect.
49. The PPS noted that there is currently no direct provision in existing legislation in NI to protect victims from psychological abuse or other coercive and controlling behaviour and stated that the new offence means that it will now have the ability to prosecute perpetrators for the more subtle forms of controlling behaviours which previously have fallen short of a criminal offence yet are common in cases of domestic abuse received by them. It supports the wording of Clauses 1 and 2 and also notes that Clause 3 will ensure perpetrators cannot take advantage of the resilience or acceptance of an abusive situation. It also highlighted that it will be able to use Clause 4 with offences in the Communications Act 2003 to combat the increasing abuse of victims by the use of digital platforms.
50. The NI Policing Board expressed the view that the PSNI will benefit from the legislation in terms of protecting and safeguarding those most vulnerable or at risk of domestic violence and abuse. The PSNI itself outlined that it had been involved in the working group for the Bill from an early stage and had provided opinions throughout the process with the aim of improving how it better polices domestic abuse and achieves criminal justice outcomes for victims of domestic abuse in Northern Ireland.

51. According to the Department the new domestic abuse offence 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
 - Ultimately reduce the harm caused by abusive behaviour

Clause 1 - The Domestic Abuse Offence

52. A number of specific issues were raised in the evidence received in relation to Clause 1.
53. The NI Policing Board noted that the Bill does not provide for a definition of domestic abuse and advised that, while satisfied that abusive behaviour is set out in some detail, it would welcome the inclusion of a standalone definition of domestic abuse.
54. In its written response the Department advised that it had considered, in conjunction with core statutory and voluntary sector partners, whether to include a statutory definition. However, it was agreed that, given the detail set out in the Bill in relation to what constitutes abusive behaviour, a standalone definition was unnecessary and to provide one would not materially change the provisions or serve a legislative purpose given that it would be likely to simply state domestic abuse means abusive behaviour as set out in Clause 2.
55. The former Attorney General for Northern Ireland, Mr John Larkin QC, stated that the breadth of the new offence provided the opportunity for individual decisions that might fall short of what is required by articles 7 and 8 ECHR and noted that it would 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 protected rights. He also highlighted that an unintended consequence of the very broad drafting of the offence is its potential for being exploited

by stalkers who could transform a complaint of stalking behaviour by A against B into instances of abusive behaviour by stating A “is trying to get me into trouble”.

56. The Department agreed that any decision taken under legislation has to be human rights compliant. On the matter of false allegations and how these are dealt with the Department advised that this will not be new to the police given the range of offences currently on the statute book which will be between connected individuals e.g. harassment offences. The issue will however be considered further as part of discussions with the police.
57. The PSNI raised the fact that the lack of an adequate definition of ‘psychological harm’ could cause difficulties from an operational perspective.
58. The Department highlighted that legislation that refers to ‘physical and psychological harm’ is generally without any further explanation e.g. 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 but indicated that it could be further expanded on in the guidance to be provided on the new offence.
59. The Women’s Aid Federation and other organisations including the NIHRC, Northern Ireland European Women’s Platform (NIWEP), the Women’s Policy Group and the Irish Congress of Trade Unions (ICTU) wanted to see the inclusion of a gendered definition of domestic abuse to include violence against women and girls.
60. In response the Department stated that, 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 and around 40% of domestic homicides involve males and it would have concerns that adoption of a gendered definition could send out a message that tackling abuse against men is less important. It also confirmed that gendered based violence will be captured by the domestic abuse offence.
61. Victim Support NI and Relate NI highlighted what they perceived as a gap relating to the need to better protect migrant victims of domestic

abuse and support those who have insecure immigration status or have an immigration status that is dependent upon their abuser. Victim Support NI stated that those with insecure immigration status are especially vulnerable to domestic abuse and less able to report it 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. Victim Support NI believes that additional provision within the legislation including provision of adequate financial support to enable such victims and their children to safely leave an abusive relationship is required. Relate NI also recommends additional provision to clarify protections for migrants and the Women's Aid Federation agrees that the legislation must protect women with no recourse to public funds such as partners of settled persons, students or temporary workers and people seeking asylum with their partners.

62. The Department confirmed that access to support services, including specialist support services, is available regardless of the status of an individual however more generally the issue of immigration status, which these concerns relate to, is a reserved matter on which they continue to liaise with the Home Office.
63. The ICTU was concerned that unless the legislation is set within a policy context which includes robust strategies and action plans, it will not in itself bring about the changes required to prevent domestic abuse and recommended that it should acknowledge 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. These barriers were also highlighted when representatives of the Rainbow Project, HERe NI/ Cara-Friend and the Migrant Centre NI gave oral evidence to the Committee. The Public and Commercial Services Union NI (PCS NI) also set out its view that 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.
64. The Department outlined that 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.

The issue of marginalised communities is a matter being considered under the seven year strategy and a range of work is also being taken forward by other Departments such as the Executive Office and the Department for Communities. Given the experience in other jurisdictions the Department considers that the new offence can make a material difference to those that are affected by domestic abuse.

65. The Northern Ireland Catholic Council on Social Affairs (NICCOSA) questioned 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 asked whether the legislation intended that a feeling of fear for a momentary period would lead to an offence being committed.
66. The Department clarified that the offence is predicated on the basis that there has to be two or more occasions of abusive behaviour and stated that 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.
67. The Education Authority (EA) questioned whether abuse on a singular occurrence and other forms of abuse e.g. modern slavery and exploitation and coercive control related to immigration status fall within the definition in the Bill and whether they can be covered by the guidance developed under the Bill.
68. The Department indicated that, as set out in the Bill, the offence will apply where there are two or more occasions of abusive behaviour where two individuals are personally connected and confirmed that the guidance associated with the offence will set out examples of abusive behaviour.
69. Dr Tony McGinn and Dr Susan Lagdon of Ulster University highlighted 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. While it is important to keep victims and survivors of domestic abuse at the centre of the judicial process they state that it should not follow that they are in a position to veto prosecution efforts which sometimes seems to be the case at present and questioned if 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.

70. The Department stated that, as is the case at present, investigations and prosecutions will be progressed where the necessary evidence is available. The Department also highlighted that 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 and there will be an increased focus on ensuring that prosecutions can proceed in the absence of a victim giving evidence.
71. The Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) was concerned that there may be an increase in women who commit and/or are accused of offences of coercive or emotional abuse and queried how the criminal justice system is prepared to address such an increase. NIACRO also questioned 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.
72. The Department indicated that the offence will apply to all who commit domestic abuse, regardless of gender and 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 been progressed through the criminal justice system under different charges. In terms of the suggested increase in women offenders the Department advised that it is currently developing a strategy to support and challenge women and girls who come into contact with the justice system and a public consultation is due to launch in the Autumn. On the matter of false allegations the Department's position is set out at paragraph 56.
73. Evangelical Alliance NI noted that the offence can be committed regardless of whether or not harm is actually caused to an individual. It was concerned that, in this age of rapidly changing social values, where many words are considered 'harmful' by some people while to others they are perfectly 'reasonable' and not in any way intended or perceived to be a cause for harm, 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. Evangelical Alliance also questioned whether the pattern of behaviour could inadvertently be 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 and asked 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.

74. The Department, in response, highlighted that 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 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 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 Department stated that 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. The Department also stated that, 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.
75. The Bar of NI (the Bar) recognised 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 indicated that 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. In the Bar's view it 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. 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 which complaints should be prosecuted.

76. The Bar highlighted that this, when coupled with the broad list of family members in Clause 5, would potentially allow a considerable range of behaviours in intimate and family relationships to fall under the ambit of this Bill. Despite this, the Bar recognised 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 and appreciated 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 was of the view that the inclusion of a clear definition of domestic abuse in the legislation would be helpful.
77. The Department outlined that 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. The Department referred to the example of the Hart brothers whose mother and sister were 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" to illustrate the type of behaviours the Bill is intended to cover. The Department does not consider that, as part of this, evidence will necessarily have to be provided of the impact on an individual where they may consider that no harm has been caused, but rather what will be important is that there is evidence of abusive behaviour. The Department outlined that the provisions focus on the actions of the perpetrator and the intention to either cause harm or be

reckless as to this. Officials have also liaised with prosecutorial colleagues in Scotland, whose legislation is framed in similar manner, and they have advised that they have not encountered practical difficulties with the operation of their offence.

78. The Department highlighted that, 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. Regarding psychological harm being a low bar, the Department indicated that 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. It also confirmed that in relation to family member the scope in the Bill reflects the cross departmental seven year domestic and sexual violence and abuse strategy and 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. Both the police and PPS have indicated that they are content with the current scope of family member in the Bill. In relation to 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 reiterated its position, set out at paragraph 54, regarding the inclusion of a statutory definition of domestic abuse.
79. The National Society for the Prevention of Cruelty to Children NI (NSPCC) warmly welcomed 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 but believed that 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. The NSPCC strongly believes that this Bill should be amended to include a similar minimum age threshold so children cannot be convicted of the proposed offence. In its view 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. The NSPCC stated that in the majority of cases a criminal justice response would not be the most helpful or appropriate response and therefore the criminal offence should not apply to children.

80. The Women's Aid Federation was also concerned that children could be criminalised and that a person under 18 years old could be charged with a domestic abuse offence.
81. The Department clarified that 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 the Department believes that 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. The Department highlighted that the experience in other jurisdictions are that the number of young people charged with an offence has been relatively low.
82. The Department stated that, 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. According to the Department 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.

83. The NSPCC also believes that the offence should capture the experiences of 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. This issue is covered in detail later on in the report.

Clause 2 - What amounts to abusive behaviour

84. The evidence received by the Committee was largely supportive of the Department's approach to reference a range of effects the behaviour may have rather than listing the actual behaviours, given the vast range of potential abusive behaviours and the changing nature of domestic abuse with perpetrators finding new ways to exert control. The description was also viewed as comprehensive and detailed. The fact that behaviour directed at someone other than the victim of abuse can constitute abusive behaviour for the purposes of this offence was also welcomed as it is a common tactic of abusers to use another person in order to inflict abuse on a partner/ex-partner.
85. The main issues raised in relation to this Clause related to whether particular types of behaviour fell within the definition of abusive behaviour, whether certain terms should be specified on the face of the Bill and whether definitions of key terms were needed.

86. The South Eastern Health and Social Care Trust (SEHSCT) and South Eastern Domestic and Sexual Violence Partnership (SEDSVP) stated that awareness raising in relation to coercive control has been on-going across NI over the past few years and encapsulates the essence of the psychological harm synonymous with domestic abuse but the term is somewhat hidden in the legislation. Both organisations believe that the term should be referenced or highlighted more within the Bill and subsequent guidance. They also believe that the term “gas-lighting” should also be referenced in both as it helps capture the essence of domestic abuse where the victim questions their own memory, perception or judgement often evoking in them cognitive dissonance and making them believe that they are going mad thus weakening their self-esteem and resilience.
87. NIWEP also recommended that coercive control should be specifically recognised in the Bill.
88. The PSNI noted there is no reference to coercive behaviour and only a brief reference to ‘controlling’ under Clause 2(3)(c). It also had concerns regarding the absence of a definition for ‘dependent’ under 2(3)(a) and ‘controlling’ under 2(3)(c). In its view the inclusion of a reasonable test is imminently sensible as an objective test.
89. MAP highlighted that threats to destroy or withhold personal possessions can 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. It also noted that spiritual abuse is not mentioned and indicated that it 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.
90. Nexus NI indicated that it broadly agreed with the definition of abusive behaviour contained in the Bill but questioned if the reference to physical and psychological harm is sufficient in order to cover emotional harm/abuse or if these should be specified and also whether, given that economic abuse is a common issue for victims of domestic abuse, it should also be specified.

91. La Dolce Vita Project recommended that consideration should be given to including the isolation of children from family members, breach of family contact orders which is determined at time of assessment as an intentional behaviour to purposely delay court proceedings, causing psychological and emotional harm on parent, child, grandparent, caregiver and child-parent-child relational distress. It also stated that there is a misconception of parental alienation and professionals involved in domestic abuse cases show no understanding of it and are not qualified to identify it. It believes that the Bill should acknowledge parental alienation as an abusive behaviour causing potential or actual harm to a child and there is a need for legislation for the protection of children from the emotional and psychological harm caused by parental alienation.
92. Men's Alliance NI (MANi), a peer support model for male victims of domestic abuse, also stated that many of the men they have spoken to have endured parental alienation and the abuse that they suffer is perpetuated by the making of false allegations, not abiding by court orders, openly demeaning and degrading them verbally to the children and using the lack of expediency and consequence in the system. MANi states that it aims for an assumption of continuation of contact with children with minimal delay and that every child deserves to have a relationship with a parent who wants to be in their life. It hopes that this legislation will enable an argument to be made that deliberately keeping a child from another parent is continuing the abuse by other means.
93. The EA believes that the term reckless in Clause 2b(ii) needs defined further.
94. In response to the issues raised about listing specific behaviours, the Department outlined that 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). In its view, 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. The Department considers that coercive and controlling behaviour, economic abuse etc. would be captured by the effects that are set out at Clause 2(3) of the Bill. It also confirmed that the guidance associated with the offence could clearly set out examples of types of abusive behaviour, such as coercive and controlling behaviour and

other behaviours, and provide further clarification where considered necessary.

95. With regard to the need for additional definitions the Department reiterated that, 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?'
96. The Huntington's Disease Association NI questioned whether provision had been made for the protection of victims from contact by the defendant post-reporting/post-conviction/release.
97. The Department confirmed that the domestic abuse offence applies whether individuals are currently, or have previously been, in a relationship and this is considered important given that domestic abuse may increase once individuals have separated. It also indicated that if there are concerns in relation to safety of an individual there would be the option of applying for non-molestation or restraining orders.
98. The Bar noted that the effects listed at Clause 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. While recognising that important work has been done by a range of organisations to combat many of the myths and misconceptions which inform attitudes and understanding of domestic abuse, this issue still persists and therefore in its view 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.
99. The Bar highlighted that it had expressed concern in response to the Department of Justice 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. To achieve this it is necessary to distinguish coercive control from other undesirable incidents of behaviour which should not 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. In addition, given the range of personal relationships covered 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. The Bar states that a defence of reasonableness must be available in respect of the offence of abusive behaviour as provided for in Clause 12.

100. The Bar also reiterated the need for continuing education on the complex type of behaviour that manifests as coercive control and states that effective public education will be key 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. The Bar highlighted that it is important to recognise that at the time of intervention by the justice system, the victim may no longer see 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.

101. Responding to the Bar’s concerns the Department stated that 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 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 is to be produced. The Department considers that, together, these will improve understanding more generally. The purpose of the requirement that harm does not have to be caused is to ensure that, where domestic abuse has occurred, 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.

102. The Department advised that, in terms of distinguishing coercive control from other undesirable incidents of abusive behaviour, 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 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. The Department also confirmed that the offence is not intended to criminalise normal friction that may occur within a relationship or family.
103. The Department reiterated that 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. Further safeguards also apply in terms of a defence where the behaviour could otherwise, dependent on the circumstances of the case, be considered reasonable - for example where a person has a gambling addiction and restrictions may be needed in terms of who they associate with. The guidance associated with the offence can provide further examples in relation to this.
104. The Department outlined that, 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 to what constitutes domestic abuse.

105. The Department indicated that 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.
106. La Dolce Vita suggested including in the legislation examples of positive conduct such as protecting the child from ongoing parental conflict and promoting the stability, attachment and security of the child's relationship with parent/family members and the right of the child to have meaningful relationships with all.
107. The Department highlighted that 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. It would not be appropriate for the Bill to state what positive steps should be taken.
108. NICCOSA requested that, in relation to Clause 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. It also questioned if Clause 2(5) is necessary at all and indicated that allowing definitions to be unlimited when there are criminal consequences could have implications for the rights of the defendant.
109. The Department clarified that 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. The Department also stated that 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.

110. The Department repeated that it is important to note that the offence operates on the basis of a number of checks and balances and 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.

Clause 3 - Impact of behaviour on victim

111. There was widespread support among respondents for this provision. Mr Jim Allister MLA, NICCOSA and the Bar, however, all raised specific issues in relation to the fact that it is not necessary to prove that the effects of the abusive behaviour actually cause harm.
112. Mr Allister drew the attention of the Committee to correspondence between him and the Scottish Justice Secretary and him and the Minister of Justice and stated that it was 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.
113. In response the Department outlined that it had been advised that the offence in Scotland, which has a similar basis whereby harm does not have to be caused, is operating well and, as the Scottish offence only came into force on 1 April 2019, published statistics are not yet available, however, they 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, the Department is not aware of any issues being raised in Scotland with regards to harm not having to be actually caused. The Department highlighted that 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.

114. NICCOSA referred to Clause 3(1) and 3(2) and questioned whether 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.
115. The Bar noted that Clause 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 state that 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). The Bar indicated that it seemed 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. It stated that the effects listed earlier at Clause 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. The Bar stated that where B does not consider this abusive, employing an objective test may cause difficulty.
116. The Bar also noted the stipulation at Clause 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'. The Bar reiterated that it was 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.
117. The Department indicated that, 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. The Department stated that it was behaviours similar to those in the example

of the Hart brothers' case whose mother and sister were killed by their father that the Bill was dealing with. In terms of the query around a non-abusive context, the Department advised that 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.

Clause 4 - Meaning of behaviour etc.

118. Issues regarding the framing of the offence were again raised in relation to Clause 4. The increasing use of electronic technology to perpetrate abuse was also highlighted.
119. The Bar noted that the adoption of either intention or recklessness as the mental element of an offence is common in criminal law and there is no reason why it should not be employed in respect of an offence of domestic abuse. However, the Bar stated that 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.
120. Noting that liability can arise from an omission under Clause 4(2)(b) the Bar indicated that 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. However, it is harder to envisage a situation where criminal liability should properly be attributed for a failure to communicate something. The Bar notes 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, it is still 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 and it reiterated that the defence of reasonableness must be available in respect of these situations given how broadly the offence has been defined.
121. The Department emphasised that the crux of the offence is that there has been abusive behaviour, whether or not there is further 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.

122. The Department believes 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. The Department notes that the Explanatory Memorandum is a short document, intended to provide an overview. It also emphasised that further safeguards in terms of a defence where the behaviour could otherwise, dependant on the circumstances of the case, be considered reasonable also apply.
123. NICCOSA cautioned that Clause 4(b) and “Intentionally failing to do something” must be treated with caution, asked in what way should a person be compelled to do something and suggested that 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.
124. The Department clarified that 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.
125. Evangelical Alliance stated 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, and questioned whether there is a clear enough boundary

between these described patterns of behaviours and those which are undesirable and unkind but not unlawful. It queried whether it could stop someone seeking help or change counselling around issues of jealousy 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 or whether it could apply 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'.

126. The Department clarified that the offence will only apply where two people are connected. Generally speaking this will not be the case in an organisational capacity where other safeguarding provisions should apply if necessary. It also highlighted that 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.
127. The Huntington's Disease Association NI questioned whether online activity such as the publication of photos, names, medical information and personal material is covered by the legislation.
128. The EA noted that coercive control can often be perpetrated via electronic and 'online' forms and suggested 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.
129. The Safeguarding Board NI (SBNI) and the Belfast DSVP also highlighted the growing use of technology facilitated domestic abuse and recommended 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.
130. The Department indicated that Clause 4 provides that abusive behaviour is behaviour of any kind and this would include behaviour that is carried out by electronic, digital or online means. It advised that the guidance associated with the offence can provide further information in relation to this.

131. The Department stated that it recognises the importance of training and awareness raising and 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.

Committee Consideration of Clauses 1 to 4

132. The Committee took the opportunity to explore a number of issues arising from the written evidence in more detail during the oral evidence sessions with the Women's Aid Federation, MAP, Victim Support NI, the NSPCC, Barnardo's NI, the Rainbow Project, HERe NI/ Cara-Friend, the Migrant Centre NI, the NIHRC, the Bar and the PPS.
133. Having considered the written and oral evidence received on Clauses 1 to 4 and the Department's written responses the Committee sought further information and clarification on a range of issues when officials attended the meeting on 3 September 2020.

The Broad Scope of the Offence

134. In response to questioning on the broad scope of the offence, officials indicated that, ultimately, the crux of the offence is whether there is abusive behaviour and the question always comes back to that. The purpose of the provisions in setting out what is deemed to be abusive behaviour and what the effects of that behaviour are is to provide a structure for what the abusive behaviour may look like and to provide clarity and certainty for those who are affected by abusive behaviour and those who may be subject to this offence.

Applying the offence to under 16 year olds

135. The issue of the offence applying to under 16 year olds and the different approach in the recent Westminster Bill was considered.
136. Officials clarified that the definition in the Westminster Domestic Abuse Bill has an age threshold of 16 however the domestic abuse offence in England and Wales applies to under-16 year olds as it is the age of criminal responsibility that applies, similar to the approach in this Bill.

The Department wanted to ensure that abuse of elderly parents, grandparents etc. by family members are captured by the offence. The officials highlighted that any decision will depend on the particular circumstances of the case and their understanding is that, in England and Wales and the other jurisdictions, there have been relatively few prosecutions brought forward in relation to those who are under the age of 18.

Abusive Behaviours

137. The Committee explored the reasons for not including the term ‘coercive control’ specifically in Clause 2 and sought confirmation on whether certain abusive behaviours would be covered by the relevant effects set out in the Bill.
138. The officials outlined that ‘coercive control’ falls within a number of the “relevant effects” set out in Clause 2 and advised that the Department was keen to ensure that the effects of the behaviour were covered rather than including a specific list of behaviours and that the potential to create a gap by including a list of specific behaviours is avoided, given that new types of abusive behaviour will materialise over time.
139. The officials advised that there is the potential for parental alienation, spiritual abuse and the use of family court proceedings to continue the abuse to come within the scope of the offence depending on the individual circumstances of the case and if it is deemed to be abusive behaviour, if it happens on two or more occasions and if it covers the types of effects that are in the legislation. The guidance to be provided by the Department will reflect the types of behaviour that come within the auspices of the domestic abuse offence.

Contact Orders

140. The Committee discussed child contact orders and how they could be used to continue the abusive behaviour by intentionally breaching them, changing arrangements at late or no notice etc.
141. The officials indicated that such behaviour could be looked at in the context of what is deemed to be abusive behaviour and if there was the necessary evidence. They also highlighted that the court has powers to deal with enforcement and breaches of contact orders and there is a

power in the Children's Order whereby a court can order that further proceedings cannot be brought without the leave of the court.

142. The subject of child contact orders is covered in more detail at paragraph 625 to 635 of the report.
143. The Department subsequently advised the Committee of its intention to bring forward an amendment to the Bill (with the agreement of the Department of Finance which has responsibility for the substantive law on private family law matters including contact with a child) to amend Article 12A of the Children (NI) Order 1995 so that a court considering an application for a contact or residence order will be specifically required to have regard to the conviction of the party applying for the order for the new domestic abuse offence (or another offence) where the child aggravator has been applied.

No Requirement to Cause Harm

144. The Committee sought further information and clarification on Clause 3 and, in particular, the no requirement to cause harm aspect of the provision given the evidence received that indicated that there have not been any prosecutions taken forward in Scotland in cases where no actual harm was caused.
145. The officials outlined that the intention was to ensure that cases can be taken forward where there is harm but where an individual may not necessarily be of the view that harm has been caused to them as they are resilient to the abuse or the behaviour has become normalised, but where a reasonable person looking at the particular information in those specific circumstances would be of the view that harm could be caused to the individual and it would be deemed to be abusive behaviour in accordance with the requirements of Clause 1. If this provision is not in the Bill there will be no opportunity to take those cases forward. They explained that the offence had been crafted in a way which intentionally tries to ensure that there are a number of checks and balances so that it does not capture unintended situations such as normal family disagreements. Acting Detective Chief Superintendent McNally indicated that, in his view, this Clause could be used to good effect but that clear examples would be very useful to ensure from an operational perspective that the organisations involved in progressing cases all have a similar understanding of how this will apply.

During its deliberations on Clauses 1 to 4 the Committee also discussed several other issues in more detail.

Inclusion of a Gendered Definition in the Legislation

146. The Committee discussed the views expressed by a number of organisations that a gendered definition of domestic abuse to include violence against women and girls should be included in the legislation.
147. Both MAP and Victim Support NI welcomed the gender-neutral language in the Bill which covers all victims of domestic abuse.
148. While Women's Aid Federation wanted to see the inclusion of such a definition in the legislation, it appreciated the reasons for the gender-neutral approach, which is also being adopted in the domestic abuse legislation currently progressing through Westminster. It pointed out, however, that the Home Office has a four-year Strategy for Violence against Women and Girls, Scotland has the Equally Safe Strategy and in Wales there is the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. In its view, if the gender-neutral approach is maintained in the legislation, then a strategy to recognise violence against women and girls is required to support the legislation.
149. HERe NI/ Cara-Friend and NIACRO also highlighted that strategies such as a Violence Against Women Strategy and a Sexual Orientation Strategy can be used to target support at particular groups and recommended strategies to address specific groups such as violence against women and girls, the LGBT+ community and other marginalised groups.
150. The Committee appreciates that domestic abuse is predominantly a crime against women, but also recognises that anyone can be a victim of domestic abuse. The Committee therefore supports the gender neutral, inclusive approach adopted by the legislation.
151. The Committee noted that Northern Ireland is the only jurisdiction without a strategy for violence against women and girls and requested clarification from the Department on why Northern Ireland does not have such a strategy in place.

152. In response the Department indicated that the seven year Stopping Domestic and Sexual Violence and Abuse Strategy clearly recognises that anyone can be a victim of domestic abuse regardless of their gender, gender identity, age or sexual orientation, amongst other factors. The cross cutting strategy was developed in collaboration with a number of Executive Departments, and engaged full consultation with statutory and voluntary sector partners representing the interests of all aspects of society. The Executive collectively agreed to the publication of that strategy. It also highlighted that during 2018/19 69% of all domestic abuse crime victims were female, however, just under a third of victims were male, while around 40% of domestic homicides involve males. The Department stated that it is essential that we seek to protect all victims regardless of gender or gender identity and ensure full inclusivity of all sections of the community, and there would be concerns that the adoption of a gendered strategy could send out a message that tackling abuse against men is less important.
153. The Committee is of the view that a Strategy for Violence Against Women and Girls would cover all forms of gender-based violence and is a separate issue from the Stopping Domestic and Sexual Violence and Abuse Strategy. The Department did not therefore address the actual issue. The Committee is supportive of such a strategy being developed and considered the wording of a potential amendment to the Bill to place a duty on the Department of Justice to provide for such a strategy. Having received advice on the draft amendment, the Committee accepted that it was beyond the purposes of this Bill and decided not to pursue the amendment. Instead, the Committee will consider and follow-up on this issue outside the context of the Bill.

Migrant Victims of Domestic Abuse

154. The Committee discussed this issue further during the oral evidence sessions with Victim Support NI and the Migrant Centre. The Committee recognises the particular circumstances of migrant victims of domestic abuse and is concerned that they are less able to come forward due to fears that issues regarding their immigration status will take precedence over any investigation of the abuse and a lack of financial support available to enable them to leave an abusive relationship.

155. The Committee wrote to the Minister for Communities to clarify the position regarding the availability of funding and support and to ask her to consider providing a sustainable, permanent destitution mitigation fund for migrant victims of domestic abuse that would cover housing costs and an adequate amount to support the victim to enable them to leave an abusive relationship. The Minister responded advising that access to public funds is determined in the first instance by an individual's immigration status which is an excepted matter and it is not an area that the Department for Communities has significant policy responsibility for or expertise in. The response set out information on the position as the Minister understood it to be and highlighted what is available in certain circumstances.
156. The Committee also commissioned a briefing paper on the arrangements governing the sharing of information between police forces including the PSNI and the Home Office where a victim or witness of crime is a suspected immigration offender. The Committee subsequently wrote to the PSNI regarding the approach it adopts to the sharing of information with the Home Office and the criteria used when considering whether to share such information in individual cases, given it could potentially impact on domestic abuse crimes being reported and prevent migrant victims of domestic abuse coming forward.
157. The PSNI responded stating that they had legal obligations to share such information when it comes to light, but drew attention to the National Police Chiefs' Council guidance which states that "Immigration rules do, however, allow for a victim of domestic violence to apply independently of their spouse for indefinite leave to remain before the end of the minimum period if they can produce evidence that the relationship broke down as a result of domestic abuse." The PSNI also stated that its primary concern is to safeguard all victims of domestic abuse and, where the evidence exists, bring offenders to justice.
158. While immigration is not a devolved matter, the Committee will continue to assess what support can be provided to migrant victims of domestic abuse as part of its on-going work on domestic violence and abuse policies and procedures.

Parental Alienation

159. The issue of parental alienation was raised by a number of individuals and several organisations in their written evidence to the Committee and the subject was also discussed in several of the informal meetings with individuals.
160. The Committee considered whether parental alienation should be specifically referred to in the legislation. However, given it supports the approach adopted in the Bill that sets out the effects of abusive behaviour in Clause 2 rather than attempting to list all the various types of potential behaviours and, noting that the Department had indicated that parental alienation could already fall within the domestic abuse offence depending on the individual circumstances of the case, and it would reflect it in the types of behaviour that come within the auspices of the domestic abuse offence in the guidance to be produced, the Committee decided that there was no need for this.
161. The Committee subsequently received correspondence from the Women's Aid Federation, the Women's Policy Group and Children in Northern Ireland stating that parental alienation is not robustly supported by scientific evidence and setting out their strong opposition to it being included in the Bill in any capacity.
162. The Committee acknowledges the difficulty of legislating in the realm of human relationships and, while most of the evidence received expressed support for the new offence as set out in the Bill and considered that it reflects the reality of an abusive relationship much more effectively and addresses the gaps in the current law, a range of issues were raised which the Committee sought further information and clarification on, both in writing and in oral evidence, to assist its consideration of Clauses 1 to 4 of the Bill.
163. The Committee notes that the two key criminal justice bodies responsible for applying the new law, the PSNI and the PPS, have both indicated that they will benefit from the new legislation in terms of prosecuting perpetrators for the more subtle forms of controlling behaviour and the ability to better protect victims of domestic abuse.
164. The Committee also notes the departmental officials' assertion that the Scottish legislation, upon which this Bill is largely modelled, is working well and the indications from the figures and indications from the first

year are not giving cause for concern with regard to the construct of the offence and how it is working in practice.

165. A number of organisations including Relate NI, the Women’s Advocacy Project @ Dove House and Women’s Aid Federation provided individual testimonies and experiences as part of the evidence they submitted and Committee Members also met privately with a number of individuals to hear their experiences and discuss the new offence. The Committee is aware how difficult it was for those individuals to relive their experiences and again wishes to place on record its appreciation of them for doing so.
166. The Committee has received powerful and persuasive evidence that for many victims the psychological impact of domestic abuse can be more debilitating than physical injuries and the behaviours are manipulative, subtle and at times covert:
- “This type of abuse makes the victim doubt they are even being abused”
 - “It’s an extremely destructive form of abuse”
 - “Don’t think I will ever recovery mentally”

It can leave victims feeling humiliated, degraded, belittled and, as one individual said:

“It stripped me of my ability to be me”.

167. It is clear that the current law does not adequately recognise that domestic abuse is not limited to physical violence and psychological abuse is just as harmful, if not more so. The Committee believes that the new offence addresses gaps in the legislation, captures domestic abuse in its myriad forms, will enable more effective action to be taken against perpetrators and will enhance the protection and access to justice provided to victims by the criminal justice system. Domestic abuse can affect anyone regardless of gender, age, class or sexual orientation and it should never be excused or tolerated. The legislation will also provide an opportunity to raise awareness of the existence and unacceptability of psychological abuse and coercive control and in the

longer term assist in changing societal attitudes towards domestic violence and abuse.

168. The Committee agreed that it is content with Clauses 1 to 4 as drafted. The Committee also agreed to support the amendment proposed by the Minister of Justice to introduce a new Clause to amend Article 12A of the Children (Northern Ireland) Order 1995 as a consequence of the new domestic abuse offence and the child aggravator.

Clauses 5 and 18 - Meaning of Personal Connection

169. 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 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'.
170. The Clause also defines a family member as a parent, grandparent, child (or stepchild), grandchild or sibling (including half-sibling) and makes provisions for these relationships in relation to each of the partners.
171. Clause 18 is an interpretation Clause and is similar to Clause 5 in terms of defining personally connected and family.
172. The definition of personally connected for the purposes of the offence was largely welcomed by those who commented on these Clauses, with organisations indicating that it was a comprehensive definition and welcoming the inclusion of children and familial violence.
173. The key issues raised related to whether the definition was too wide, or conversely should be widened, and the need for clarity regarding whether relationships such as adoptive parent/child, foster parent/child and kinship carer/child were included.

174. Victim Support NI questioned 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. It also recommended that there should be further clarity on whether “affinity” would 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 are not 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.
175. On the same theme, the NIHRC recommended that Clause 5(3) should be extended to unequivocally include family relationships such as an uncle, aunt, niece, nephew or cousin. It also recommended that the definition of Clause 5 should be widened to include for example individuals living together without the need for any form of intimate relationship, live-in carers within a private home and guardians.
176. The Methodist Church in Ireland suggested having a clause to permit inclusion of a relationship that is not covered in Clause 5(1) given ‘family’ has changed and become much more fluid therefore it is challenging to describe all the possible relationships that could equate to a personal connection.
177. Nexus NI questioned whether the definition made sufficient provision for children who are foster children or children who live in temporary care and also recommended that consideration should be given to including other family relatives with parental or guardian roles e.g. aunts, uncles etc.
178. Relate NI also believed that there is scope for further clarity on the application of Clause 5 to fostering, adoption and kinship care arrangements. It also stated that the personal connection did 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, either part-time or full-time within a private home.
179. MAP requested clarity to ensure that ‘affinity’ covered 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.

180. In its written evidence the Department outlined that when considering the scope of family members it 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. The Department advised that both the police and the PPS are content with the current scope of family member in the Bill.
181. The Department also confirmed that 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 and 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.
182. In relation to the treatment of individuals in care, the Department indicated that it would not be appropriate that private care scenarios are captured within the context of domestic abuse and considers that this would be a safeguarding issue.
183. In contrast to other views, the Bar of NI noted that the Clause brings a very wide range of personal connections within the scope of the Bill, which goes beyond partners or ex-partners and suggested 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).

184. The Bar noted 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.
185. It stated that, 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. 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 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. The Bar questioned 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.
186. The Department confirmed that the scope of the domestic abuse offence in Scotland is limited to intimate partner relationships while in this Bill it also covers family members as set out in the cross Departmental strategy. To do otherwise would be contrary to the position adopted in that strategy and 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. It clarified that it had 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). It reiterated the position regarding the need for evidence of abusive behaviour and confirmed that the offence is not intended to criminalise normal friction that may occur within a relationship or family.
187. NICCY noted that the definition of personal connection is broader than that set out in other jurisdictions of the UK or the Republic of Ireland and includes a wide range of family as well as intimate relationships. Children under 18 years who display harmful or abusive behaviour towards under 18s with whom they are in a relationship and towards

adult family members therefore fall within the scope of the offence. The Commissioner stated that 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, and 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.

188. In response, the Department outlined that, 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. The Department stated that 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.

Committee Consideration of Clauses 5 and 18

189. During the oral evidence sessions with the NIHRC and the Bar of NI the Committee explored the issues they had raised regarding widening the definition of personally connected further or whether it should be narrowed to avoid unintentionally criminalising what would be considered to be normal family friction.

190. The Committee also discussed whether fostering and kinship arrangements would be covered by the definition with officials during the oral evidence session on 3 September and they confirmed that they would fall within the scope of parental responsibility and that the parental exclusion provision would also apply. The Committee subsequently requested further clarification of what the term “affinity” meant and, given that stepfamilies is specified in the legislation, questioned whether there was any reason why adoptive parent/child, foster parent/child, kinship carer or child relationships should not also be specified in the Clause. The Committee also requested further clarification on the rationale for adopting a different approach to the Scottish legislation which confines the offence to partners and ex partners.
191. The Department, in its written response of 23 September, advised that the terminology used in the Bill and those that are covered in it in relation to family members/relatives are similar to those contained in the Family Homes and Domestic Violence Act (NI) 1998. That legislation contains similar references to relationships being of the full blood, half blood or by affinity and also contains references to step relationships. The use of the term affinity in legislation refers to the relationship that each person in a marriage has to the relations of the other person. The Department confirmed that the relationship between foster parent/child and kinship carer/child is captured in the context of parental responsibility.
192. The Department also outlined that around 35% of domestic abuse crimes involve a family relationship and therefore it considered it important that the offence covers close family relationships and is not simply limited to intimate relationships. It also highlighted that the scope of the ‘Stopping Domestic and Sexual Violence and Abuse’ strategy covered both intimate and family relationships and operationally the scope for domestic abuse for the police currently includes close family. On this basis, close familial relationships already fall within the scope of domestic abuse. The content and scope of the Bill was agreed by a multi-Agency Task and Finish Group which involved a range of voluntary sector partners as well as representatives from the police, the PPS and the Probation Board.
193. **Having considered the issues raised in the evidence, the Department of Justice’s response and the further clarification it had provided and the**

assurance given by officials that the Clauses, as currently drafted, would not have the unintended consequences of criminalising normal family disagreement which should not fall with the scope of the offence, the Committee agreed that it is content with Clauses 5 and 18 as drafted.

Clauses 6 and 19 - Establishing connection by notice

194. Clauses 6 and 19 provide 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.
195. The Clauses set 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 Clauses also recognise under special circumstances later objection in court is allowed.
196. One issue was raised by NICOSSA who commented that, in relation to Clause 6, whilst it may be implicit that the same objections procedure as 6(4)(a) applies to 6(4)(b), it may be wise to restate the objection procedure.
197. The Department responded advising that 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.
198. **The Committee agreed that it is content with Clauses 6 and 19 as drafted.**

Clauses 7 and 20 - Service of notice on people

199. Clauses 7 and 20 provide for the service of notices in relation to Clauses 6 and 19 for the purpose of challenging that a relationship is to be taken as established. Both Clauses state that notice will be served

through hand, postal or, where agreed, electronic delivery to the accused or the accused's solicitor. The Clauses also provide clarity in terms of what is meant by certain terms, for example electronic address and working day. They also outline that in their 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.

200. Women's Aid Federation objected to sending the notice by post to the person at the person's proper address stating that this has been a major issue for many years, it is not secure and safe for the victim and survivor to know if the notice has been served and how is service proved.
201. NICOSSA stated that, in terms of "proper address," caution should be taken to ensure the address is still that of the defendant as he or she may have recently left the premises following an alleged domestic abuse incident.
202. NIWEP suggested recording evidence of delivery and/or requiring confirmation of receipt in relation to notices by electronic means to reduce the administrative burden and delay due to non-delivery or contested delivery.
203. The Department advised that in relation to the concerns of the Women's Aid Federation, it understood they related 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, therefore it is considered that this standard form of service should not prove problematic in this regard. The other issues raised could be dealt with at an operational level.
204. **The Committee clarified the position regarding the concerns of the Women's Aid Federation with officials when they attended to give oral evidence and subsequently agreed that it is content with Clauses 7 and 20 as drafted.**

Clause 8 - Aggravation where victim is under 18

205. Clause 8 provides for aggravation of the domestic abuse offence, where the person in the relationship is under the age of 18. The aggravations apply 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.
206. 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.
207. The key issues raised in the evidence related to the need to ensure that young people are not punished unduly harshly, other vulnerabilities should be considered as aggravating factors and the need for a full review of the family courts.
208. Barnardo's NI welcomed the recognition of the particular impact on victims who are under 18 and highlighted 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.
209. In response the Department highlighted that 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.
210. Victim Support NI was largely supportive of this Clause but stated 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.

211. Victim Support NI recommended that consideration be 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.
212. MAP also supported this Clause but wanted 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.
213. NIWEP agreed with the concerns highlighted 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.
214. NEXUS, while supportive of the Clause, wanted clarification on how the law would be applied in cases where the perpetrator is also a child.
215. While appreciating the concerns expressed by Victim Support NI, NIWEP and MAP, the Department stated that 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.
216. The Department outlined that 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.

217. The Department also indicated that the experience in other jurisdictions is that the number of young people charged with an offence has been relatively low. 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.
218. The NSPCC welcomed the policy intention behind Clauses 8 and 9, in attempting to recognise the impact that domestic abuse has on children, but believes this Clause should be amended in light of its 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 the NSPCC suggests the incorporation of child C into the statutory definition of domestic abuse would be a much clearer and effective solution.
219. The Department outlined that 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). It reiterated the importance of ensuring the offence is available in cases of domestic abuse against parents, vulnerable elderly grandparents as well as ongoing and persistent abuse in teenage relationships and outlined the

approach adopted in the juvenile justice sector regarding responding to issues of domestic abuse in all its forms.

220. Women's Aid Federation noted 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.
221. Women's Aid Federation 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 are being used. The Federation also suggested that other vulnerabilities that should be considered as aggravating factors are disabled women, mental illness, women with no recourse, and BME women to reflect the inequality that underpins domestic violence and abuse.
222. The Women's Policy Group also welcomed the inclusion of children as an aggravating factor and stated 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 wanted to see this extend to a full review of Family Courts to assess how children are protected and safeguarded across both legal systems. WPG also called for other status groups or circumstances to be considered as aggravating factors including disability, BME women, LGBT+ people, and women with No Recourse to Public Funds.
223. The Department advised that it had given 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.
224. It also highlighted that no other jurisdiction locally provides for criminalisation in relation to parental responsibility under domestic abuse legislation, while the provisions in the Bill 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.

225. The Department outlined that it (along with other departments with responsibilities in relation to family justice and the judiciary) was 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 and Wales (relating to matters for which the Department has policy responsibility) might usefully be adopted in this jurisdiction.
226. COPNI noted that the protection of a vulnerable older person falls outside the stated aggravating factors contained in the Bill: 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.
227. The Department advised that determining the sentencing in a case, where a statutory aggravator does not apply, will be for a judge to consider whether there are any issues, 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.
228. NICCY noted 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. The Commissioner also noted 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.

229. 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.
230. NICCY highlighted 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 criminalise or disproportionately impact on children engaged in harmful or abusive behaviour.
231. In response the Department outlined the range of entitlements provided by the Victim Charter for young people. 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.

232. The Department reiterated that 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.
233. The NIHRC welcomed 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.
234. The Department outlined that involvement of a child in terms of the giving of evidence should only be utilised where considered necessary and referred to the Victim Charter entitlements. It also highlighted that, 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)).
235. The Bar agreed 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 determining the appropriate sentence under 8(3)(a), (b) and (c). The Bar 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.

236. The Department advised that it had 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.

Committee Consideration of Clause 8

237. The Committee noted that in other jurisdictions the number of young people charged with an offence had been low. The Committee also sought further information regarding the implementation of the Gillen Review in relation to contact orders and child arrangements in the context of domestic abuse.
238. In response the Department outlined that the Gillen Review noted that the Practice Direction in England and Wales sets out what a court hearing a private law application in relation to a child is required to do in a case in which it is alleged or admitted, or there is other reason to believe, that the child, or a party, has experienced domestic abuse perpetrated by another party, or that there is a risk of such abuse. The intention of the Practice Direction was to deal with a difficulty that had arisen in that jurisdiction as a result of their statutory presumption that the involvement of a parent in a child's life is likely to further the child's welfare. While there is not the same statutory presumption in Northern Ireland the Gillen Report made the recommendation "out of an abundance of caution".
239. Officials advised the Committee that the Practice Direction was for the judiciary to consider.

240. The Department also provided the text of a minor drafting amendment to tidy a small aspect of the wording, particularly to reflect the position that course of behaviour under the main offence is not the sole element of the domestic abuse offence.

241. The Committee agreed that it is content with Clause 8 subject to the minor technical amendment proposed by the Minister of Justice.

Clause 9 - Aggravation where relevant child is involved

242. 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 to control or frighten the partner/connected person.

243. 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.

244. 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.

245. 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.

246. 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.
247. The aggravator provided by Clause 9, and in particular 9(2)(b) which covers where a child sees, hears or is present during a single incident of the abuse, was widely welcomed by a range of organisations including EA, the Safeguarding Board, the NI Policing Board, Mid and East Antrim Borough Council, Belfast DSVP, SEDSVP, and CJINI.
248. The Committee for Health welcomed the discrete recognition of the damage that can be done to children and young people, by seeing or hearing domestic abuse; or by being involved in abuse, such as when a child is used to contribute to emotional or psychological distress. The Health Committee highlighted that this connects with a further cross-cutting area of policy in relation to Adverse Childhood Experiences.
249. The Minister of Health advised the Committee that a provision has been included in the draft Adoption and Children Bill to amend the definition of “harm” in the Children Order so that it includes harm caused to a child by seeing or hearing the ill-treatment of another. This will place an explicit requirement on courts, police and authorities, in a range of contexts, to consider the effect of domestic abuse on a child when they are making decisions about him or her that require harm or potential harm to be taken into account. The Health Department will review the wording of the amendment to determine whether any change is required to link with the definition of “abusive behaviour” in this Bill once it receives Royal Assent.
250. A number of organisations, including those representing children and young people, did however raise specific issues, including in relation to the wording of the Clause.
251. Barnardo’s NI, while welcoming the Bill’s recognition of the impact of domestic abuse on children, in particular through the aggravation outlined in this Clause, highlighted the importance of the legislation

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. Barnardo's NI wanted the current reference in subsection (2)(b) expanded to recognise that children do not need to witness the abuse to be affected, and are impacted by the abuse whether or not they are the intended victim.

252. CLC also recommended 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.
253. Women's Aid Federation had concerns that Clause 9(2)(b) that 'the child saw or heard, or was present during ...' 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.
254. The Department advised that 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, and stated 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 further abuse another person whether knowingly or not.
255. The Department appreciated the concerns about the wider impact of domestic abuse, even where a child is not present, but stated that 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 indicated that it is hoped that through the introduction of the domestic offence that longer term incidents of domestic abuse will be reduced.
256. While MAP supported an aggravation where a child becomes involved but is not the primary intended recipient of the abuse it stated 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.

257. The Department clarified that, 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.
258. Children's Law Centre (CLC) recommended the need for an automatic consideration regarding 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.
259. The Department advised that the issue of contact with a child would be considered by a court if there was an application for 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.
260. The NSPCC noted that the Scottish legislation on which Clause 9 is based includes a 'reasonable person' test - that the aggravation is proven if 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 recommended that a 'reasonable person' test is also added to this Clause.
261. NICCY welcomed the intent of this aggravator Clause and noted 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.
262. The Commissioner highlighted that children are adversely affected by domestic violence beyond occasions where they only see or hear it and consideration should be given to how this can be better reflected in the legislation. She noted 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. She also sought assurances that, where a child is affected by domestic violence, formal safeguarding procedures as well as the protections of criminal law are engaged.

263. In response to the points raised by the NSPCC and NICCY the Department indicated that it considered that the offence in this Bill, 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. 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 child 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. It reiterated its view that it is not 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. With 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.
264. In terms of giving evidence, the Department stated that 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 and 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)).

265. The Bar agreed that the offence should be aggravated where it involves a child as provided for in Clause 9. It notes that Clause 9(2)(b) provides that the 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 questions 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.
266. The Bar also noted the similarities between this Bill and the Domestic Abuse (Scotland) Act 2018 and queried the Department's rationale for not 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".
267. In terms of Clause 9(4), the Bar considered 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.
268. Responding to the points raised the Department stated that the involvement of a child in terms of the giving of evidence should only be utilised where considered necessary and outlined the entitlements of children under the Victim Charter. When giving evidence a person under 18 is also 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)).
269. The Department repeated that it considers that the offence in this Bill, 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.

270. The Department also outlined that it had 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.

Committee Consideration of Clause 9

271. The Committee discussed the wording of Clause 9, and in particular 9(2), extensively with departmental officials and when deliberating on the Bill provisions. Further information was requested regarding whether it would apply in a situation where a child does not directly witness the abuse and on the Department's rationale for adopting a different approach to the Scottish legislation with regard to this Clause.
272. The Committee was concerned that while there is an assumption in the Clause that harm has been done with the reference to "seeing, hearing or being present during...", that is not specific or clear enough. Noting the wording of Clause 5 subsection 5 of the Scottish legislation which states that "for it to be proved that the offence is so aggravated there does not need to be evidence that a child had ever had any awareness of or understanding of A's behaviour or been adversely affected by A's behaviour" the Committee was of the view that, to ensure effective enforcement and prosecution, the wording of Clause 9 needed to be strengthened to reflect this position much more clearly. The Committee proposed amending the Clause, either by adopting the Scottish wording unless there was any specific reason not to use that wording, or wording that provided the same sort of clarity, and sought confirmation regarding whether the Minister was content to bring forward an amendment on that basis. The Committee also decided to seek advice on its own possible amendment.

273. The Department outlined that the Domestic Abuse (Scotland) Act 2018 provides that the domestic abuse offence is so aggravated if a child sees, hears or is present during an incident of behaviour that A directs at B as part of the course of behaviour and repeated that it considers that the child aggravation provided for by this Clause 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 this Bill is simply that the child see, hears or is present. Given this there is no associated condition in that a child does not have to be aware of the abusive behaviour.
274. The Department indicated that the child aggravator provided for by Clause 9 applies if, at any time in the commission of the offence, a relevant child sees, hears or is present during an incident of abuse, they are used to abuse another person or abusive behaviour is directed at them. The Clause does not provide that the child has to have an awareness of, be adversely affected by, or understand the behaviour. The grounds are that the child is involved in one of the ways set out above. The Department did not therefore consider that an amendment akin to the Scottish legislation was needed.
275. Having considered the additional information, the Committee was still minded to amend the Clause and sought the views of the Department on the text of its draft amendment, set out below, including whether there were any implications if it was added to the Clause and what value it would bring to it:

Draft Committee Amendment

Clause 9, Page 6, Line 11, at end insert-

(2A) For the purposes of subsection (1), the domestic abuse offence aggravation does not require the child to have—

ever had any—

awareness of A's behaviour, or

(ii) understanding of the nature of A's behaviour, or

(b) ever been adversely affected by A's behaviour.

276. The Committee also asked the Department whether it would consider providing greater clarity in the Explanatory and Financial Memorandum to address its concerns.

277. Having considered the Committee draft amendment, the Department clarified 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. Proving the aggravation is then subject to a condition that, for the offence to be aggravated, there does not need to be evidence that the child has been aware of, understood or been adversely affected by the abuse. The offence in the Domestic Abuse and Family Proceedings Bill is aggravated on the basis of an objective fact, simply that the child sees, hears or was present (the first limb of the Scottish requirements), turning purely on these facts, unlike the Scottish provision which also requires a second limb of consideration of adverse affects. The Clause does not raise the question of the child's awareness.
278. The Department advised that the proposed Committee amendment would therefore introduce an unrelated adverse affect provision, which is unnecessary and would add nothing to the Clause and it could risk giving rise to confusion by casting doubt on the effectiveness of it. The Department indicated that it would not support the Committee's proposed amendment.
279. Following further discussions with officials on 24 September, during which some Members indicated that they were still not convinced that the wording of the Clause made it clear 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, they agreed to consider what clarification could be provided in the Explanatory and Financial Memorandum in relation to 9(2).
280. The Department subsequently advised the Committee that the understanding of the Scottish provisions and the advice given to the Committee in writing and during oral evidence on 24 September was incorrect. The Department apologised for the error and clarified the position regarding the Scottish offence. It also indicated that it did not change its view in relation to the 'sees, hears or is present' provision and again confirmed that there continues to be no requirement that the child has been aware of, understood or been adversely affected by the abuse.

281. The Department informed the Committee that it was proposing to remove the reference in the explanatory note at 9(2)(a)(ii) and insert text at the end of the part related to subsection 9(2) more generally to read “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.”
282. With the caveat that the Department amends the Explanatory Note as outlined to provide greater clarity in relation to 9(2) the Committee agreed, apart from Ms Woods MLA who indicated that she was still not satisfied with the wording, that it is content with Clause 9 as drafted.

Clause 10 - Behaviour occurring outside the UK

283. Clause 10 relates to extra-territorial jurisdiction and 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.
284. A number of organisations welcomed this provision including the NI Policing Board, the MAP and the NIHRC, who advised that this provision should be retained in line with the Istanbul Convention.
285. NIWEP, while welcoming the provision, sought further clarification of the definition of ‘habitually resident in Northern Ireland’ and NILGA noted that there would be some categories of migrants who fall outside it and requested consideration be given to the legislative gap. NICOSSA advised caution about the evidence adduced where the behaviour has wholly or partly occurred outside the jurisdiction.
286. In response to these points the Department advised that ‘habitually resident’ is common legislative terminology 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 habitually resident a person must have taken up residence and lived in a country for a period. It could be as little as a month, while between one and three months is likely to be appropriate to demonstrate habitual residence. In order for the

extraterritorial provisions to apply there must be a degree of permanency, tied to Northern Ireland, for the defendant and critical to this will be whether the person is deemed to normally reside in Northern Ireland. The Department also highlighted that 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.

287. The Department indicated that the same evidential rules, in terms of admissibility, would apply whether the abusive behaviour takes place in Northern Ireland or elsewhere.

288. The Department also provided the text of a minor drafting amendment to tidy a small aspect of the wording, particularly to reflect the position that course of behaviour under the main offence is not the sole element of the domestic abuse offence.

289. The Committee agreed that it is content to support the proposed amendment.

290. The key issue raised in relation to Clause 10 was by the previous Attorney General for Northern Ireland, Mr John Larkin QC, who was concerned that the Clause appeared to penalise acts occurring outside Northern Ireland that are not criminalised in the country in which they take place and, by virtue of Section 6(2)(a) 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.

291. Mr Larkin indicated that, in his view, in providing for penal consequences for behaviour, Clause 10 operates to 'form part of the law' of the country in question and 'forming part of the law' is a broad concept, not restricted to formally or explicitly altering that country's statute. By making behaviour criminal in territory where that behaviour is not otherwise criminal offends against the limitation of the Assembly's competence.

Committee Consideration of Clause 10

292. During the oral evidence session with Mr Larkin on 18 June 2020, the Committee explored his concerns regarding Clause 10 further. Mr Larkin indicated that the issue was not about the merits or otherwise of the Clause but rather the more fundamental question of whether the Assembly could make provision for this and expanded further on his concern regarding the provision being outside the legislative competence of the Assembly.
293. Mr Larkin subsequently wrote to the Committee to clarify the relevance of the Istanbul Convention as referred to in his oral evidence. He stated that there is an obligation on the UK to establish a level of extra territorial jurisdiction for some offences even if the behaviour is not an offence in the territory where it takes place - these offences are sexual violence, forced marriage, female genital mutilation, forced abortion and forced sterilisation. The offence of domestic abuse is not one of them. However, this obligation in international law does not expand the legislative competence of the Assembly and he reiterated his view that for the UK to ensure that it is in compliance with the requirement to claim at least some level of extra territorial jurisdiction the surest way of doing so is through an Act of Parliament as this avoids any doubt over legislative competence.
294. To assist consideration of this key issue the Committee asked the Minister of Justice to outline her position on the matter and commissioned its own legal advice from Assembly Legal Services.
295. In response, the Minister stated that she and officials had given extensive consideration to this issue over recent months and had held discussions with both Legislative Counsel and senior legal advisers.
296. The Minister outlined that the Northern Ireland Act 1998 prohibits an Assembly Act from forming part of the law in another country but does not prohibit extra territorial provision in the sense of application as distinct from extent, so long as such provision sounds only as a matter of Northern Ireland law. The Minister confirmed that she considers that it is within the legislative competence of the NI Assembly to create an offence under Northern Ireland law even where the criminal conduct occurs outside Northern Ireland. In relation to behaviour in another country that contributes to the domestic abuse offence in Northern

Ireland, individuals will not be penalised in that country or by its authorities even if they are penalised in Northern Ireland.

297. The Minister indicated that it is not considered that the Clause forms part of the law of another country or confers functions other than in or as regards Northern Ireland. The Minister also highlighted other pieces of legislation with a similar construct to this provision which Ministers, the Executive and the Assembly have approved and which are deemed to be within the legislative competence of the Assembly.
298. The Committee noted that the issue of Assembly competence had been robustly considered on a number of occasions, in conjunction with legal advisers and Legislative Counsel, who are satisfied that Clause 10 is within the legislative competence of the Assembly.
299. Taking into account the assurances provided by the Minister of Justice and its own legal advice on the matter, the Committee is content with Clause 10 subject to the minor technical amendment proposed by the Minister of Justice.

Clause 11 - Exception where responsibility for children and Clause 17 - Exception regarding the aggravation

300. Clauses 11 and 17 provide 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.
301. Two main issues were raised by organisations in relation to these Clauses. The first was the exclusion of children from the statutory definition of the offence itself and the second was whether existing children's legislation provided adequate protection for child victims of non-physical abuse.
302. Victim Support NI stated that while it understood and supported the reasoning for the exclusion from this legislation of children being abused by someone with parental responsibility for them, it questioned 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.

303. Victim Support NI recommended 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.
304. Barnardo's NI was 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 and will leave children who are victims of parental coercive control with no legislative protection. It stated that the offences in existing legislation 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.
305. MAP highlighted 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.
306. The NSPCC stated that, as presently drafted, 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. Creating a minimum age of 16 for this offence, as NSPCC has called for, would render this exception unnecessary. If such an age threshold is not introduced the NSPCC is opposed to this Clause.
307. The NSPCC noted that 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. The NSPCC would welcome further consideration of how children's experiences can be directly included within the statutory definition of the offence itself.

308. Women's Aid Federation also called for children to be treated as victims in their own right and not as associated persons and stated 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 Federation wants 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 at individual, community, organisation and government levels. It 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.
309. Action for Children agrees with Women's Aid Federation 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.
310. The CLC is challenged as to the rationale and justification for this Clause and strongly advocates for its removal from the Bill. It 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. The CLC is of the view that, 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.
311. The NI Human Rights Commission outlines 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.

312. The Presbyterian Church in Ireland recommends that this legislation is harmonised with best safeguarding practice and specifically with current child protection legislation.
313. NIWEP is unclear why children for whom the perpetrator is responsible should be unprotected in domestic abuse legislation, particularly as children typically experience abuse by a parent or guardian and would welcome clarification of the rationale for this Clause. While accepting that child protection legislation covers some of this ground, NIWEP is of the view that it would be prudent and relevant to ensure an appropriate overlap between these pieces of legislation. This would serve, for example, to ensure that the nature of domestic abuse and its impact on victims is appropriately understood in cases where children are directly victims of abuse or victims through witnessing abuse of another person.
314. NICCY also highlights its concerns regarding the exceptions set out in Clauses 11 and 17 relating to where a person has parental responsibility for a child and asks that consideration is given to whether there is a necessity for such exclusions.
315. The Commissioner states that, as the Bill 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. She also notes 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. The Commissioner does not however consider that the offence of domestic abuse could be reasonably engaged in such cases. She further notes that the Clause 12 defence on the grounds of reasonableness would also be engaged by any such possible situations and is 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.
316. While recognising that the exception Clauses are intended to relate to a child as person B, the Commissioner notes that they again highlight the complex ways in which the Bill engages with children and young people.

Following on from this, it may be helpful for assurances to be sought that the exceptions will not lead to patterns of domestic violence and of control and coercion, which can be deployed against children as part of domestic abuse, being diminished or dismissed or resulting in lower levels of protection for children based on parental responsibility. For example, in considering coercive control it is important to acknowledge that this is often experienced as control of the home, including control of children, rather than simply of one adult within a household. This may, for instance, include one parent denying a child access to family and friends or to electronic devices (which present a means to stay in contact with supportive peers and trusted adults and to seek help and information) if they do not monitor and report on the behaviour and movements of another parent or may involve one parent during post-separation contact seeking to use a child to glean information about the residence or routine of the adult victim or to convey intimidating messages to them.

317. The Department, in response to the concerns raised, stated that it had given 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.
318. The Department indicated that, having considered the matter further and taking account of the concerns expressed, it was discussing a possible amendment to child protection provisions (contained in health legislation but which could be brought forward through the Domestic Abuse Bill subject to agreement) with Department of Health officials 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.
319. The Department stated that no other jurisdiction locally provides for criminalisation in relation to parental responsibility under domestic abuse legislation and the provisions in the Bill 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.

320. The Department confirmed that, where there are issues regarding safeguarding and child protection, these would be addressed through other means, offences and sanctions. It also stated that, when determining an application for contact with a child, the paramount consideration of the court 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.
321. In response to the CLC comments the Department stated that it had considered the content of the Bill and was content that it is human rights compliant.

Committee consideration of Clauses 11 and 17

322. The oral evidence sessions with the NSPCC and Barnardo's NI provided an opportunity to discuss the child related issues in more depth.
323. The Committee subsequently requested further information from the Department on why a child is not considered a victim in its own right in the Bill, to what extent the proposed amendment would address this and the position in relation to multiple children in a home. The Committee also indicated that it wanted sight of the text of the amendment referred to by the Department at the earliest opportunity to assist its consideration of Clauses 11 and 17.
324. In response the Department confirmed that it had given 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.

325. The Department outlined that the proposed amendment to current child protection legislation was around an offence of ill treatment of a child so that it explicitly states that ill treatment can be physical or otherwise. The purpose of this would be to ensure that non-physical ill treatment of a child, by someone with parental responsibility for them, is criminalised. It would also ensure that current references to an offence around unnecessary suffering or injury to health would also explicitly state that this relates to the suffering or injury being of a physical or psychological nature, again ensuring that non-physical behaviour is captured. This should enable matters such as isolation, humiliation, bullying etc. to be captured. Assuming such an amendment is accepted the Department stated that each child could potentially be a victim of that offence. This would however depend on the individual facts and circumstances of the case. The Department viewed this as a more appropriate means to deal with the concerns expressed around the non-physical abuse of a child.
326. The Department subsequently provided the text of the proposed amendment to the child cruelty offence in Section 20 of the Children and Young Persons Act 1968.
327. The Department also advised that the child cruelty offence only applies to those under the age of 16. It had consulted with colleagues in the Department of Health and the PSNI and was not aware of similar child protection provisions that could easily be adjusted to explicitly deal with non-physical ill treatment of those aged 16 and 17 in the context of a parent-child relationship. To ensure that non-physical abuse of 16 and 17 year olds in a parent-child relationship is clearly provided for in legislation the Department was considering reducing the age threshold for the parental responsibility exclusion from under age 18 to under age 16 in Clauses 11 and 17. In the absence of this there is the possibility that it may not be possible to address the non-physical ill treatment of those aged 16 and 17 in this context.
328. The Department outlined that the standard offence thresholds would apply, insofar as any behaviour would have to be considered to be abusive, be viewed as such by a reasonable person and occur on two or more occasions. It also highlighted that the parental responsibility exclusion in England and Wales is also 16, and had not given rise to difficulties there and it could be considered appropriate in that it is linked to a range of age-specific permissions e.g. school leaving age, age at which a person can live on their own, ability to work in a licensed

premises, getting married or joining the armed forces with parental consent. Furthermore, any decision to charge an individual with the offence would be dependent on the particular circumstances of the case and the reasonable person defence would also apply.

329. During the discussion on the proposal, officials acknowledged that the change would come under the auspices of the domestic abuse offence rather than child protection legislation which was not ideal however the options for addressing the gap in the Domestic Abuse Bill were limited to this approach.
330. While concerned about the gap that the amendment to the child cruelty offence would create, assuming it was made, the Committee viewed the Department's proposed remedy as a significant change and did not believe that it was in a position to clearly understand any implications or consequences of making it without having the views of key stakeholders.
331. To assist the Committee, the officials sought the views of the NSPCC and NICCY on the proposal. Both organisations remained of the view that children should be wholly captured within the domestic abuse offence and the parental responsibility exclusion should not apply. They did not comment directly on the proposal to reduce the age threshold.
332. Acknowledging that child protection legislation falls to the Department of Health, the Committee considered whether to support the amendment to the child cruelty offence that would address the issue of non-physical ill treatment or injury to a child under the age of 16, but would create a gap for 16 and 17 year olds unless the Department's proposed approach to reduce the age threshold for the parental responsibility exclusion from under age 18 to under age 16 in Clauses 11 and 17 was adopted.
333. The Committee agreed that it is content with Clauses 11 and 17 as drafted. The Committee also agreed to support the amendment proposed by the Minister of Justice to add a new Clause to the Bill to amend the child cruelty offence in Section 20 of the Children and Young Persons Act 1968.
334. The Committee indicated that it did not have enough time or sufficient information to properly consider the Department's proposed

amendments to Clauses 11 and 17 and therefore noted them. The Committee expects the Department to ensure that the gap created for 16 and 17 year olds, assuming the amendment to the child cruelty offence is made, is fully addressed. The Committee will consider any further information provided by the Department on the implications or consequences of its proposed remedy and any other options to address the issue.

Clause 12 - Defence on grounds of reasonableness

335. Clause 12 provides that it is a defence for the accused to show that the course of behaviour was, in the particular circumstances, reasonable. The Explanatory and Financial Memorandum provides examples where this may apply such as 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.
336. 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.
337. Nothing in this Clause affects the broader requirement for the prosecution to prove beyond reasonable doubt that the offence has been committed.

Evidence received in support of the reasonable defence

338. Those operating in the criminal justice field and a number of other organisations supported the inclusion of this defence in the legislation and believed that it is framed appropriately. Substantial concerns have however been raised by a wide range of organisations that this defence is open to manipulation by perpetrators. Many of those who work with and support victims of domestic abuse are opposed to this provision and want it removed completely from the Bill. Others have raised concerns that the wording of the Clause is not specific enough and have highlighted the need for robust safeguards and the provision of

guidance to the criminal justice agencies to ensure the provision is used as intended.

339. The PPS noted that the wording of the Clause largely follows the same provision as section 6 of the Domestic Abuse (Scotland) Act 2018 and a similar defence also exists in England and Wales in section 76(8) and (9) of the Serious Crime Act 2015. The PPS is not aware of any particular issues with the operation of the reasonableness defence, due to the way it is framed, in the other jurisdictions. In its oral evidence the PPS stated that statutory defences are a familiar concept in criminal law and it is confident that the courts would not have any difficulty in ensuring that the defence works in a way that is fair to both victims and defendants.
340. The PSNI indicated that it understands the inclusion of such a defence in the legislation and notes that the interpretation of what is a reasonable defence will rest with the courts. It has suggested that within Clause 12(2) 'an issue' may benefit from a definition and that it may be beneficial to include a more general reasonable test as that found in Clause 2(2)(ii) such as 'would be considered by a reasonable person in all the particular circumstances as reasonable'.
341. The Bar was of the view that a defence of reasonableness should be available in respect of abusive behaviour, particularly given the broad nature of the potential scenarios that could be caught under this legislation. It stated that the wording of the Clause is acceptable but has some questions around the application of the defence. Noting that the Explanatory and Financial Memorandum only provides two examples and there are likely to be more in which the behaviour could be considered reasonable in the circumstances, it would welcome further guidance on this. It also highlights 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.
342. The NI Social Care Council (NISCC) stated that the defence is appropriate and it adequately recognises the complexities that are inherent in non-violent patterns of behaviour that may be abusive. NICCOSA also believed it is a well drafted article in terms of the rights of the alleged perpetrator to raise a defence and the PBNI agree that the 'reasonable defence' is clarified sufficiently.

343. Derry and Strabane District Council and Derry and Strabane PCSP, noting that in all cases the onus is on the accused to bring forward sufficient evidence, are also satisfied that the 'reasonable' defence is framed appropriately and that the intent of when it would apply is clear but acknowledges that each case will be determined on the specific evidence presented to the court.
344. Mid and East Antrim Borough Council also feels the intent behind the 'reasonableness defence' is very clear, does not strike as unfair or excessive and is sufficiently transparent to avoid manipulation or misinterpretation of its intended meaning.

Evidence raising concerns about the reasonable defence

345. In contrast Women's Aid Federation are very concerned that this defence is open to manipulation by abusers and believes it could be used against disabled women, where the abuser is the carer, or other vulnerable individuals such as women with health problems, particularly mental health conditions or substance abuse problems which could be as a consequence of the abuse, LBT women and BAME women. Women's Aid Federation highlighted that abusers can be very manipulative and can portray an image of a very caring partner with the result that the victim is not believed. Consequently, 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 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. Women's Aid Federation therefore wants this Clause removed from the Bill.
346. This position is supported by the Women's Policy Group NI, the Women's Advocate Project, the Women's Resource and Development Agency, NIWEP, the Women's Regional Consortium, HERe NI/ Cara-Friend, and NIACRO who all raise similar concerns and for the same reasons want the Clause removed from the Bill.

347. The Women's Policy Group specifies these concerns in its written submission, indicating that in creating such a provision, 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 etc. In the Group's view 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 other direction and that defendants could argue that the behaviour or status of the complainant or victim caused them to become temporarily unreasonable. 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.
348. HERe NI/ Cara-Friend highlighted that there is a long history in the USA of reasonableness being invoked as a defence where a perpetrator has committed a violent act upon learning that someone is LGB and/or T, particularly impacting trans individuals and also noted that reasonableness may be used as justification of abuse against disabled victims, those with mental health, people with substance misuse patterns, or children where the perpetrator has an authoritative role over them such as parents.
349. The Rainbow Project has the same concerns as other organisations regarding the potential for the defence to be perverted to justify the abuse of vulnerable, mentally ill or disabled people and stated that if it is to remain in the legislation it will be important for officers and 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 identity may not be used as a defence for abusive behaviour. Training and guidance for officers and agencies must also ensure that the dignity and safety of vulnerable victims is not sacrificed in defence of those who have caring responsibilities for them.
350. The Committee for Health heard evidence that mental ill-health including depression, anxiety and addictions can often be related to domestic abuse and in that context expressed concerns about the

potential risk that an abuser could seek to exploit such conditions to advance a defence of reasonableness as cover for exerting coercive control over a victim. The Health Committee recommended that detailed consideration be given to the safeguards proposed in connection with the use of this defence and the protection of victims with mental ill-health and also recommended that the implementation of Clause 12 be subject to review.

351. The SEHSCT and the South Eastern DSVP were concerned that the defence may be used by perpetrators to manipulate victims and to justify their actions and believes that the Clause will create greater difficulties and prove a hindrance in tackling domestic violence and abuse. NIPSA is also of the view that the defence will provide a potential 'loophole' that could be used by perpetrators to justify their abusive behaviour by portraying victims of abuse as mentally unstable, unable to make decisions for themselves, or having a history of addiction. This will serve to break down a case and is harmful for those victims who experience disability, mental health disorders or addiction issues caused by abuse.
352. While Relate NI is not opposed to the principle that the legislation makes provision for a reasonableness defence it is concerned about the scope of the defence. In its view 'enough to raise an issue' increases the opportunity for this defence to be abused by perpetrators as does basing the 'reasonableness' of the defence on personal factors in the lives of those who experience abuse. Relate NI recommended that consideration should be given to how the language in the Bill and the EFM could be tightened to reduce the possibility of the defence being used incorrectly and to ensure there is a clearly defined basis for using it.
353. The Belfast DSVP also had concerns that the wording is not specific enough to prevent the defence being used by a perpetrator to imply a victim has a mental illness or be used to justify their actions and highlighted the need to educate the public and professionals on what constitutes coercive control. These concerns are shared by the PCS and the ICTU who is particularly concerned about how the defence could be used against women with disabilities, older women and women with mental health conditions and believes that education on the new offence is vital if the legislation is to have the desired effect and protect victims and prosecute perpetrators.

354. COPNI was concerned that the defence may allow abusive behaviour to go unpunished and the phrase 'enough to raise an issue' is sufficiently loose to allow for victim-blaming as a means of defence. In his view 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. The Commissioner therefore supports any efforts to tighten up the Clause while allowing the standard reasonableness test as a defence but only when formulated in a manner that recognises the power dynamics of many domestic arrangements.
355. The NI Policing Board identified that the absence of a definition of what it is to be 'reasonable' for a defence to be provided is an issue and stated that this concern is around those who are in care or caring relationships and those who have disabilities with their physical health and mental health.
356. Barnardo's NI believed that it is crucial that guidance is developed to clearly outline the parameters of this defence given that the definition of reasonable behaviour is not stated in the Bill and it is therefore open to interpretation which raises serious concerns that vulnerable victims may continue to suffer abusive behaviour under the guise of what is considered to be reasonable.
357. The NIHRC on the one hand welcomed Clause 12 as it acknowledges the existence of difficult circumstances where behaviour is non-abusive due to the circumstances but it is concerned that the defence could be misused as a justification for abuse and highlighted that there is the risk that particularly vulnerable victims that suffer from mental health issues or have disabilities and have inadequate legal support and representation could be disproportionately impacted by the implications of such a defence.
358. The Commission recommended that the Department ensures that effective safeguards are in place to prevent misuse of this defence by perpetrators to the detriment of the victim. It states that this requires particular consideration of the potential vulnerabilities of the victim that require special protection, such as women, children and persons with disabilities. It also requires consideration of whether the burden of proof should instead rest with the defence to prove beyond reasonable doubt that utilising the defence is necessary and proportionate and

recommends consulting with sector experts and victims on this specific issue.

359. The NICCY also highlights the importance of robust safeguards being in place in relation to the defence in order to ensure that it is not used inappropriately and to further harm victims.

360. Nexus NI highlighted 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 is also their carer. Due to a range of myths male victims of abuse often feel that their experiences can be discounted or minimised by authorities and it is also important that this issue is taken into account. Nexus NI has concerns that the defence in its current form could lead to difficulties for any victim with a disability or vulnerability to seek protection from the law. In its view, for a reasonableness test to be properly applied, both legal professionals and jurors will need an understanding of what coercive controlling behaviour looks like and what behaviours would meet this threshold.

361. MAP indicated that while it appreciated the rationale for the inclusion of a reasonable defence it must not be open to any potential misuse and must only be used in limited circumstances to ensure the most vulnerable victims of abuse are protected and not as a further tool to abuse. MAP stated that the burden 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.

362. Victim Support NI appreciated the motivation behind the inclusion of a reasonableness defence within the legislation but had slight concerns that it could result in some of the most vulnerable victims of abuse being left unprotected and believed that in its current form it may be a blunt instrument which could lead to difficulties for any victim with a disability or vulnerability to seek protection from the law. Victim Support NI recommends amending the Explanatory Memorandum to tighten up the circumstances in which it is anticipated that a reasonableness defence may be employed.

363. Victim Support NI 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. It 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.

364. NSPCC is also not convinced that the defence contained in Clause 12 is sufficiently clear and would welcome more detail on how 'reasonable' is defined and the Education Authority recommends defining the circumstances where a reasonable defence is linked to mental health e.g. severe dementia, and what underlying condition does not constitute reasonable defence.

365. The Presbyterian Church noted 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.

The Department of Justice position

366. In response to the concerns and issues raised and the calls for the reasonable defence provision to be removed from the Bill the Department stated that the statutory defence in the domestic abuse offence is not a novel or unusual feature of legislation and 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.

367. It is the view of the Department that the provision does not give a free pass to those that are accused of the offence. Evidence will be needed and an assessment then have to be made as to whether the behaviour is reasonable taking account of all the circumstances of the case.

368. It outlined that, 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 position 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.
369. In addition, evidence of the reasonableness will have to be provided on two or more occasions, it cannot be a one off incident. It will be for the judge to decide if there is sufficient evidence, and, if so, it is then for the PPS to disprove the defence and prove the offence, reflecting the common position since the introduction of the Human Rights Act 1998. Together these provide a check and balance.
370. The Department explained that 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). The 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 and there do not appear to be significant issues. The Department pointed out that 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.
371. The Department indicated that, in the absence of a statutory defence, general defences would be available. However, the specific statutory

defence defines clear parameters for how the defence is to work and it is considered an important balance within the Bill. To remove it would risk upsetting the calibration of the Bill as a piece, which is designed to prevent criminality arising unfairly.

Committee Consideration of Clause 12

372. The Committee understands and appreciates the significant concerns a wide range of organisations and respondents have in relation to the potential inappropriate use of this defence. The Committee therefore spent some time discussing this provision during the oral evidence sessions with organisations and considering the range of information and clarification provided by the Department on how it expects the defence to work in practice. The Committee also commissioned a research paper on the use of a similar reasonableness defence in other jurisdictions to assist its assessment, and took the opportunity to seek the views of the previous Attorney General for Northern Ireland, Mr John Larkin QC, on the proposed defence when he gave oral evidence on the Bill on 18 June 2020. Mr Larkin advised that he had no issue with the provision of the defence.
373. During the oral evidence session with departmental officials on 3 September, the Committee questioned what the effect would be if this Clause was not in the Bill and explored a number of scenarios to clearly establish the view of the Department on how and in what circumstances the defence could be used and what safeguards there were to prevent it being manipulated by perpetrators.
374. Officials advised that this Clause provided balance in the Bill. They stated that, while the focus of the legislation is to ensure that victims are protected, this Clause is intended to try and ensure that individuals are not criminalised for behaviour that may be carried out in order to protect or assist someone and that may appear or be deemed to be abusive but, given the particular circumstances of the case, there is a reason why that behaviour has been carried out. The focus at the outset is on the evidence and information about abusive behaviour and the defendant will then have to provide information or evidence to satisfy the court that the behaviour in those particular circumstances was reasonable. Officials advised that they had had discussions with colleagues in the Home Office and in Scotland regarding their

experience given both jurisdictions have a clause that is fairly similar to Clause 12 and there are no indications that the application of this is giving rise to significant issues in the cases being brought forward and it appears to be working the way that it should.

375. Officials also highlighted that, given the domestic abuse offence is a course of behaviour, an individual would have to provide evidence for a defence in terms of each of the incidents that make up the offence rather than just one or two and the court will have to be satisfied that the behaviour was reasonable in terms of each of the various incidents which, in their view, makes it much more difficult to manipulate or subject this provision to abuse.
376. While the Committee understands and appreciates the concerns expressed by a wide range of organisations regarding the provision of this defence and some Members have their own reservations, the Committee accepts that, given the scope of the offence and the wide personal connection, the Clause provides a necessary balance to the Bill. The Committee notes that those working in the criminal justice system have not raised any issues in relation to the defence and view it as a familiar concept in criminal law and the fact that it appears to work as it should in the other jurisdictions also provides some level of reassurance.
377. In the absence of an alternative approach to provide the necessary balance in the legislation and noting the clearly stated views of the Department, set out in both its written and oral evidence, regarding how this defence should work and the need for it, including its assertion in its letter dated 18 May 2020 that “it is not considered that the defence provision will provide a charter to harm vulnerable people and would not cover deliberately harmful behaviour” the Committee agreed to support Clause 12 as drafted.
378. The Committee expects the Department to closely monitor the use of this defence to ensure that the concerns expressed in the evidence received are not realised. If there is any indication that the defence is being manipulated by perpetrators or is providing a ‘loophole’ for abusive behaviour the Department must take swift action to provide a remedy.

Clause 13 - Alternative available for conviction

379. 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.

380. While supporting this provision MAP was concerned that this alternative may be misused and more significant forms of abuse would be reduced to this by prosecutors or the PSNI thus misrepresenting a course of abuse to a single incident of abuse.

381. NIWEP also agreed with the provision but recommended 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 and analysis of how the legislation is implemented. NIWEP also stated that it is 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.

382. The Department stated that 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). 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 and this would only be considered when all the evidence of the case had been considered. It thought that the number of instances where an alternative offence is provided for would be low, given that both the police and Public Prosecution Service would

have to be satisfied in bringing forward a case 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. In relation to the recording of data the Department indicated that operationally it would be difficult, and likely prohibitively expensive, to record why the domestic abuse offence was not proven on an individual case basis. It may also be as a result of a jury decision where the offence is tried at Crown Court.

Committee Consideration of Clause 13

383. The Committee sought further information and clarification on why this Clause is necessary, how it would work in practice and the implications if it were removed from the Bill. The Committee also raised concerns that the wording of the Clause did not clearly reflect the explanation of the purpose of the Clause as outlined by officials and asked the Department to reflect on how it could be enhanced to provide greater clarity.
384. The Department outlined that this provision is intended to deal with a scenario where it is considered that there may be what is considered to be abusive behaviour, however, the personal connection (which needs to be proved for the domestic abuse offence) is challenged by the defence and not proven to the court. In these circumstances the behaviour could be deemed to amount to harassment (or stalking in due course), which does not require a personal connection. In the absence of the provision, it may be that the person is not charged with any alternative offence. While it is considered that this would most likely be the reason for an alternative offence having to be considered the Department did not wish to be limited to this, in terms of stipulating it in legislation, as it may not be the only scenario and there may be other limited circumstances, dependant on the individual circumstances of the case. The Department indicated that it would amend the Explanatory and Financial Memorandum to include the scenario as an example and would also include it in the guidance being produced on the new offence. The Department also confirmed that it did not consider that the provision would give rise to a 'downgrading' of the offence and the aim would always be to secure a conviction for the domestic abuse offence. The Department subsequently provided information on the burden of

proof/evidential base required to meet the test of personal connection for the Committee.

385. The Department also provided the text of a proposed amendment that would insert provision, for the avoidance of doubt, as to the effect of the Criminal Law Act 1967, which contains general provisions for alternative verdicts in indictment (Crown Court) proceedings to make sure that there is no risk of implying that the provisions in the 1967 Act are ousted by what is contained in Clause 13.
386. **Having considered the further clarification provided, the Committee accepted the rationale for this Clause and noted the Department's confirmation that the aim would always be to secure a conviction for the domestic abuse offence. The Committee also welcomed the Department's commitment to amend the Explanatory and Financial Memorandum to enhance the description of this provision to provide greater clarity and to cover it in the guidance which is being produced for the new offence. The Committee also agreed to support the proposed amendment.**
387. **In light of the further information and the action to be taken by the Department to amend the EFM the Committee agreed that it was content with Clause 13 subject to the amendment proposed by the Minister of Justice.**

Clause 14 - Penalty for the offence

388. Clause 14 provides that the maximum penalty for the offence on summary conviction (that is at magistrates' court level) is 12 months' imprisonment or a fine up to the statutory maximum of £5,000 (or both) and on conviction on indictment (that is at Crown Court level) the maximum penalty is 14 years' imprisonment or a fine (or both).
389. The Explanatory and Financial Memorandum indicates that 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.

Penalties for the new offence

390. In the written evidence received by the Committee there was widespread support for the penalties provided for in the legislation with organisations including the Women’s Aid Federation, NIWEP, the Women’s Policy Group, NIPSA, Nexus NI, Derry and Strabane PSCP, the Education Authority, the Methodist Church, Mid and East Antrim Council, PBNI, the Rainbow Project, Relate NI and SBNI all expressing the view that the penalties recognised the serious nature of domestic abuse and acknowledged the serious impact of such abuse on victims. The Consortium for the Regional Support for Women in Disadvantaged and Rural Areas stated that:

“the fact that domestic abuse crimes are punished severely sends a powerful message that society will not tolerate this behaviour and when it does happen it will be dealt with more harshly. It is also important for victims as they understand that this is a serious crime and that the criminal justice system will treat it as such.”

391. Victim Support NI also indicated that robust sentencing tariffs act as both a deterrent and a reflection of the abhorrence of the crime.

392. While supporting the penalties, a number of the Women’s organisations highlighted current issues regarding, in their view, short prison sentences and decisions to refer serious cases to lower courts.

393. The Women’s Policy Group did question the usefulness of a prison sentence in terms of the rehabilitation of offenders and stated that recidivism is a real problem with these kind of offences as they are driven by underlying attitudes rather than by circumstances. However, in its view, substantial sentences communicate to the public as well as the offender the gravity of domestic abuse and the intolerance for it in society. The WPG believes that mandatory sentences for guilty pleas and when found guilty deserves serious consideration.

394. In welcoming the significant sentencing provided by the Bill the PSNI stated that it would continue to work in partnership with the PPS and the courts to ensure that cases presented to the court result in improved criminal justice outcomes for the victims of domestic abuse.

395. The NI Policing Board, while supporting the penalties, was concerned that the maximum sentences would most likely be applied in cases

where there is coercive control in conjunction with physical violence and drew attention to the possibility of cases where there is no evidence of physical abuse but where coercive control was prominent and how this could lead to homicide.

396. Both SEHSCT and the South Eastern DSVP expressed concern that sentencing for murder of a partner incurs a lesser sentence than murders not domestically motivated and Derry and Strabane District Council felt that a maximum sentence of 12 months was not a strong enough deterrent for an act that can potentially result in severe mental/physical damage and did not agree that 14 years is a long enough sentence for an act of domestic violence murder.
397. In its written response the Department confirmed that the higher penalties could relate to an offence of psychological abuse with no evidence of physical abuse. The sentence granted in each individual case will ultimately depend on the nature of the offence and is for the judiciary to determine having taken account of the particular circumstances.
398. The Department also clarified that the offence can attract a sentence up to 14 years' and incidents of domestic abuse can also be progressed under other charges where appropriate e.g. rape. If a domestic homicide was to occur this would be treated as such and would not be progressed under the domestic abuse offence. The murder charge could also be progressed along with a domestic abuse aggravator that would enable the sentence to be increased up to the maximum available.
399. In contrast to other organisations the Bar of Northern Ireland was of the view that the maximum penalty of 14 years' or a fine or both is particularly high, given that in cases involving serious abuse it seems very likely that conduct will be capable of being prosecuted as a discrete offence of violence or a sexual offence under existing legislation, many of which carry very significant sentences, and that is where the gravity will be reflected. Whilst appreciating that the nature of the penalties is intended to reflect the cumulative nature of the offence over a period of time, the Bar found it difficult to envisage a course of behaviour amounting to abuse that would not include violent or sexual offences and yet may warrant a 14-year sentence. The Bar noted that Part 2 of the Bill provides that any such offences could also be aggravated because it involves domestic abuse.

400. The Department outlined that the maximum penalty of 14 years' is aligned with other serious offences involving serious violence or rape and is considered appropriate given the overarching nature of the offence. The Department agreed 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 but stated that were the domestic abuse offence is used to cover both physical and non-physical abuse it is important that the maximum sentence available reflects this.
401. The Bar of Northern Ireland also questioned why a provision to enable the court to make a restraining order when it considers it appropriate, akin to Section 5 and Section 5A of the Protection from Harassment Act 1997, had not been included in the Bill.
402. The Department clarified that Articles 7 and 7A of the Protection from Harassment (Northern Ireland) Order 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". As a result of the removal of the linkages to specified offences under Articles 4 and 6 of the 1997 Order in 2009 the court already has the power to make a restraining order on conviction of any offence (which would include the new domestic abuse offence) where the necessary conditions are met that there is conduct that amounts to harassment or will cause a fear of violence. There would be nothing to prevent the court doing this or the Public Prosecution Service putting it forward as part of the case, particularly where an alternative offence of harassment would be imposed, without a need to stipulate this in the Bill.

Sentencing Guidelines

403. A range of organisations recommended that sentencing guidelines should be developed to support and encourage consistency across the courts and ensure that there is no hierarchy of offences whether the abuse is physical, psychological, emotional or coercive and controlling. In their view it would provide a framework within which autonomous and professional judgement by individual judges could be employed.
404. NIACRO, in its written submission, outlined that sentencing guidelines had the potential to contribute to increased fairness, improving

consistency and reducing discrepancies, but it recognised that there also needed to be room for discretion to take account of any exceptionality or mitigating circumstances in a particular case.

405. The Department stated 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 on this issue. It also highlighted that a sentencing guidelines paper on domestic violence and abuse by His Honour Judge Burgess is currently available on the Judiciary NI website and 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.

Other options for disposal of domestic abuse cases

406. The current lack of programmes for perpetrators of domestic abuse was raised and NIACRO, the Women's Aid Federation, NIWEP, the Women's Advocacy Project, Relate NI and MAP all highlighted the need for investment in such programmes, outside the current provision for people who recognise their need of support to change, in relation to the rehabilitation of abusers given the rate of reoffending in domestic violence and abuse cases. MAP drew particular attention to the fact that there are no programmes for females who perpetrate abuse in Northern Ireland and Nexus NI stated that a specialist programme on rehabilitation of offenders should be introduced.

407. In its written submission the Women's Policy Group NI articulated the serious concerns there are regarding how restorative justice approaches would be applied in domestic abuse crimes and stated that, even if victim-led, the power-dynamics and power disparities between the participants must be acknowledged and many victims may feel pressurised to undergo restorative justice practices by their abusers. To ensure that survivors do not feel belittled a very robust system of safeguards needs to be in place.

408. HERE NI/ Cara-Friend and other organisations also indicated that any restorative justice approach must be victim led and non-compulsory and it should recognise the power the perpetrator has exercised over the victim and how this may impact their response.

409. The Department stated that, in terms of rehabilitation, it recognises the unique dynamic and characteristics of domestic violence and abuse as it relates to recidivism. It believes that the new offence will provide an opportunity to enhance understanding of this type of offending and 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 re-offending and re-victimisation. It considers that there is a potential for restorative justice and appropriate interventions in custody and in the community to contribute to the rehabilitation of offenders who demonstrate abusive behaviour but acknowledges that it requires sensitive handling and significant preparation by trained experts to ensure that victims are in no way re-victimised by the process. It advised that a range of work is being undertaken in relation to behavioural change programmes and currently work can be undertaken with individuals by the Probation Board for NI as part of the sentence handed down by the court. The Probation Board deliver two court mandated programmes as additional requirements of a licence or order - Building Better Relationships and Respectful Relationship Interventions. Bespoke one to one work can be delivered to female perpetrators subject to supervision. The Department also outlined that a more general pilot of court mandated behavioural change programmes was undertaken in Londonderry Magistrates Court in 2018 however uptake of this was much lower than expected and an evaluation is currently being undertaken.

410. The Department highlighted that, as part of its Problem Solving Justice approach, it is piloting behavioural change programmes for those that are showing concerning behaviour but have not yet reached the criminal justice system. Further decisions on the way forward will depend on the outcome of the evaluation of the piloted programmes. A key focus of the work in relation to Problem Solving Justice is to tackle the root causes of offending behaviour and reducing harmful behaviour.

411. The Department stated that 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 reoffending. The Department is currently consulting on the development of an adult restorative justice strategy for Northern Ireland and would welcome responses from groups and fora that support and represent victims of domestic violence and abuse. It has given a commitment that any future

work to develop restorative responses will be undertaken in partnership with key stakeholders, including victims. The Department also highlights that any involvement of a victim would be their decision.

412. Dr Tony McGinn, Lecturer in Social Work, and Dr Susan Lagdon, Lecturer in Psychology at the Ulster University stated in their written evidence that perpetrators' rehabilitation efforts are not grounds for sentencing leniency and research supports that the likelihood that perpetrators of domestic violence will change is low. They argue that the legislation should expressly state that engagement with therapy or behaviour change programmes is not permitted as grounds for leniency in either criminal or family courts to prevent perpetrators and their legal representatives from manipulating the outcome on this basis. They also believe that judicial penalties should be designed primarily for the purpose of specific and general deterrence and incapacitation to prevent further abuse being visited on the victim and to provide time and space for them to avail of support and consider their circumstances. Custodial sentences are therefore more often the correct answer in the prosecution of domestic violence perpetrators. In their view responding to domestic abuse with the seriousness it deserves projects a clear message at societal level that such abusive behaviour is not and should not be tolerated.
413. The Department outlined that it is the judge who decides on the individual sentence, guided by a number of considerations including the maximum sentence available, whether the defendant pleaded guilty or not, the level of sentences in similar cases, any Victim Impact Report etc., and the sentence given will ultimately depend on the nature of the offence and the particular circumstances of the case. The Department also highlighted that there are a number of purposes of sentencing including some form of penalty or loss to the offender, protection of the public, deterring further offending, and acknowledging the harm caused and sentences may also aim to provide a restorative outcome.
414. The Committee for Health highlighted the evidence that many young people found to be engaging in abusive behaviour are also victims of abuse and stated that this should be taken into account in dealing with young people. The Health Committee recommended that a tailored approach be taken in respect of young people accused or convicted of domestic abuse, such that engagement with the justice system is underpinned by support to explore and address any experience of

abuse with a view to helping such young people develop healthy relationships. The Health Committee also recommended that, where considered appropriate, young people have access to youth diversionary processes which are in place for other offences.

415. Barnardo's NI also highlighted the need for specialist early intervention support for young people exhibiting abusive behaviours in order to break the cycle before adulthood and stated that the services must be child-centred and trauma-informed, designed to support and protect young people and divert those displaying abusive behaviour from criminalisation. In its view 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.
416. NSPCC in its oral evidence indicated that it wanted to see the damaging behaviours and harmful effects of abuse, where both the victim and perpetrator are under the age of 16, dealt with through a robust and comprehensive safeguarding and child protection response within the domain of health and social care rather than a criminal justice response.
417. Parenting NI raised concerns that there is no specific mitigation or exception detailed for abuse of a parent by an under 18-year-old child. While the penalties provided for may be appropriate and reasonable for adult perpetrators such potential punishment is unlikely to motivate abused parents to report this crime or seek help. While parents will wish for the abuse to stop it is possible that they would prefer to continue to suffer rather than have their child imprisoned and in the circumstances where a fine is imposed the money would most likely come from the victim. Parenting NI recommends amending the legislation to provide that the penalty is something other than imprisonment where the offender is (1) the child of the victim and (2) under the age of 18 - further support would have to be provided to the family to address the abusive behaviour - or specific sentencing guidance is provided so that children under the age of 18 who abuse their parents are not imprisoned unless they present a real and present danger that cannot otherwise be mitigated.
418. In response to the concerns raised the Department outlined that, 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 are available. Specialist interventions are delivered as part of community or court-ordered disposals, often in collaboration with other statutory and voluntary organisations. The Department stated that 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 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 they are considered personally to be at risk of continuing significant harm. The Department also highlighted that the experience in other jurisdictions is that the number of young people charged with an offence has been relatively low and it is important that the offence is available in cases of domestic abuse against parents and vulnerable elderly grandparents as well as ongoing and persistent abuse in teenage relationships.

419. In terms of those young people who display harmful behaviour the Department has indicated that there should be a co-ordinated approach by Health and Social Care Trusts, the police, Public Protection Arrangements NI, the PPS, victim support services and youth justice bodies. This coordinated approach should include working with the young person whose behaviour has been harmful and those working with the young person who has been harmed.

Committee Consideration of Clause 14

420. **The Committee supports the penalties provided by Clause 14 which reflect the nature of the new domestic abuse offence and the fact that it may cover psychological and physical abuse. The Committee believes that the penalties demonstrate the seriousness with which the crime of domestic violence and abuse is viewed and sends a message to the perpetrators, the victims and the general public in Northern Ireland that such crimes are not acceptable and will not be tolerated.**
421. The Committee notes the position regarding the handling of cases involving children under the age of 18 as articulated by the Department in its written evidence.

422. During the oral evidence session with officials on 3 September 2020, the Committee sought clarification of the Department's position in relation to sentencing guidelines for the new offence. Officials confirmed that the Department is keen to have sentencing guidelines and stated that, from the discussions with the Judicial Studies Board, the sense was that this is likely to be considered as part of the process going forward and is fairly standard in relation to new offences.
423. While appreciating the autonomy of the judge and the need to be able to take account of the particular circumstances of each individual case when deciding on a sentence, the Committee is of the view that sentencing guidelines would aid consistency and should be available for this new offence. The Department should continue to liaise with the Judicial Studies Board on this issue.
424. The Committee noted the information provided by the Department on the provision of perpetrator programmes to address offending behaviour. The Committee will be considering the Department's proposals for an adult restorative justice strategy for Northern Ireland in due course and will give consideration to the adoption of any such approach in domestic violence and abuse cases at that time. In doing so the Committee will bear in mind the concerns articulated and the need for it to be victim-led, non- compulsory and for robust safeguards to be incorporated in any such scheme.
425. **The Committee agreed that it is content with Clause 14 as drafted.**

Clause 15 - Aggravation as to domestic abuse

426. 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.

427. There was general widespread support for the aggravator clauses in the evidence received on the Bill.
428. The PPS welcomed the aggravator, highlighting that it will have particular significance in prosecuting cases of domestic abuse and should make it easier to identify serial perpetrators from their criminal records.
429. MAP supported the inclusion of a generic aggravator within the law but stated that it was important that the aggravator is recorded throughout the entire process from initial report to resolution in court to enable the use of special measures for those giving evidence and offer mechanisms of support and protection to those facing abuse. MAP also expressed the view that 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.
430. Victim Support NI also supported 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 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.
431. The Department outlined that 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.
432. The Department also advised that, 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 but 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.

433. Women's Aid Federation raised concerns in its written evidence on how repeat offences involving several different women would be handled and the need to record this aggravator throughout the whole process from initial police report to resolution in court.

434. The Department highlighted that 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.

435. The Bar considered 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 and believes that 15(4)(d) is not necessary and could affect the judiciary's assessment as to the starting point of a sentence in any case involving domestic abuse as an aggravating factor. It highlighted that it would 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.

436. The Department advised that it had carefully considered the obligation that should be placed on the judiciary, taking its independence into account and the need not to interfere with this. For this reason 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.

437. **The Committee noted the Department's responses to the issues raised and agreed that it is content with Clause 15 as drafted.**

Clause 16 - What amounts to the aggravation

438. 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.

439. The Bar of NI referred to its previous comments on the reasonable person test, the definition of psychological harm and recklessness. In addition it noted that 16(3) 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. The Bar noted the example provided in the Explanatory and Financial Memorandum that the aggravation could 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 but, beyond this, they were generally unclear as to the specific scenarios which it is envisaged would fall within this and requested further clarity on the necessity of 16(3) being included within the Bill. The Bar also repeated its assertion that it might be helpful for the legislation to include a clear

definition of domestic abuse to give further certainty and clarity to the circumstances in which this legislation can be appropriately used.

440. The Department clarified that 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 towards another person in order to subject the individual to abuse. The Department advised that it is important that the offence can capture both direct and indirect abusive behaviour where the intention is to subject the individual to abusive 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.

441. The Department reiterated its position in relation to the inclusion of a definition of domestic abuse in the Bill.

442. **The Committee agreed that it is content with Clause 16 as drafted.**

Clause 21 - No right to claim trial by jury

443. 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.

444. Evangelical Alliance requested clarification on the rationale behind this Clause stating that it seemed unusual not to have the option of a jury trial in what remains a serious criminal charge with a huge social stigma.

445. The NIHRC stated that, in line with Article 6 ECHR and Article 14 UN ICCR, this Clause should only be utilised in exceptional circumstances and recommended that it was 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.

446. The Department responded advising that the purpose of this Clause is to ensure that the criminal justice system is not used to further abuse

individuals through electing for trial at Crown Court and that 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. The Department advised that 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.

447. **The Committee agreed that it is content with Clause 21 as drafted.**

Clause 22 - Special Measures Directions

448. 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.).

449. A number of organisations commented on Clause 22. Issues covered included the need for special measures in family and civil proceedings, the need to ensure that special measures when granted are actually delivered, and the Barnahus approach to support child victims.

450. Women's Aid Federation welcomed the provision of automatic eligibility for special measures in domestic violence and abuse cases in criminal cases but highlighted that the 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. The Women's Aid Federation wants a guarantee of special measures for victims and survivors of domestic violence and abuse in the family courts and indicated that failure to ensure parity in the court systems will leave survivors at continued risk of harm and provide for an inconsistent approach to safety between the courts.

451. The Federation also highlighted that there are many examples where special measures have been assured but on the day of court they are unavailable. The Women's Regional Consortium stated that victims should be made aware that they can avail of special measures when going to court and that this information should be delivered consistently

by an agency of the criminal justice system. The Consortium also indicated that frequently the special measures were not in place when women arrived at court.

452. Victim Support NI also strongly recommended 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. Victim Support NI 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 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.
453. The Bar also wanted consideration 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. It stated that 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.
454. MAP believed 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. It stated that 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 in court may be used in cross examination to ascertain clarity or facts.
455. The NIHRC welcomed the provision that victims will automatically be eligible for consideration of special measures when giving evidence and recommended 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.

456. In its written evidence NICCY 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. Once established, this could be extended to support child victims and witnesses of domestic abuse.
457. The Department outlined that, 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. 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.
458. In relation to special measures at family court the Department outlined that 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.
459. The Department advised that it was 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. It was 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 had written to the Lord Chief Justice for his views.
460. The Department indicated that work would be undertaken with criminal justice agencies to ensure there is increased awareness of special measures. It had also completed an initial scoping of the Barnahus (Children's House) model and would establish a Working Group in partnership with other criminal justice organisations and the voluntary

sector, to consider how to deliver similar benefits to child victims of sexual abuse as those delivered through this model, with the aim of preventing re-traumatisation or re-victimisation of the child during their journey through the criminal justice system.

461. In response to the comments of the NIHRC, the Department stated that 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 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).

Committee Consideration of Clause 22

462. The Committee discussed the provision of special measures with departmental officials during the oral evidence session on 3 September 2020.

463. The Committee also requested further information on the proposed departmental amendments to require Court Rules to make specific provision in relation to special measures in family and civil proceedings for victims of domestic abuse and other offences.

464. The Department outlined that the Court Rules would make provision so that victims of domestic abuse were automatically eligible for consideration of special measures in family and civil proceedings. It will be for the court hearing the proceedings to determine whether it is necessary to make a direction for special measures in an individual case. The operational and other implications would be considered in advance of any Court Rules being made. The Department subsequently provided the text of the two amendments.

465. **The Committee agreed that it is content with Clause 22 as drafted. The Committee also agreed to support the amendments proposed by the**

Minister of Justice to add two new Clauses to the Bill to provide for court rules for special measures in family proceedings and for special measures in civil proceedings.

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

466. 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 in the proceedings. The prohibition applies only to hearings where a partner/ connected person is to give evidence.
467. The Department indicated that the intention of this Clause is 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.
468. **The Committee agreed that it is content with Clause 23 as drafted.**

Clause 24 - Meaning of offence involving domestic abuse etc.

469. 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.
470. **The Committee agreed that it is content with Clause 24 as drafted.**

Clause 25 - Guidance about domestic abuse

471. Clause 25 stipulates that the Department of Justice may 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.

472. A number of organisations commented on the need for guidance to aid the implementation of the new offence and assurances were sought that voluntary sector organisations would be involved in the preparation of the guidance along with statutory partners.
473. The Education Authority welcomed the suggestion of guidance to accompany the new Bill and stated that it would ensure that EA guidance to staff and managers complemented it.
474. Victim Support NI stated that statutory guidance would be necessary to underpin and address the added complexities and intentions of the legislation and it would be important that such guidance was drafted with input from expert domestic abuse practitioners. It could also serve as a particularly useful training tool.
475. NIACRO also believed that 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.
476. Women’s Aid Federation, MAP, the Women’s Policy Group, the Women’s Regional Consortium NI and NIWEP all requested clarity in relation to the guidance and sought assurances that both voluntary sector organisations and statutory partners would be involved in the drafting of it. NICCOSA also indicated that it would welcome the opportunity to consider any rules or guidance issued before the legislation is enacted.
477. Relate NI was of the view that clear guidance would be required for personnel from justice agencies to ensure the consistent and robust application of the Bill’s provisions and the guidance would need to be reviewed on a regular basis.
478. The Bar stated that it will be necessary for the Department to publish guidance on the law and procedure relating to domestic abuse and noted 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.

479. The PSNI indicated that, from an operational perspective, the police will rely on the accompanying statutory guidance. The guidelines will greatly assist the police if they provide clarity on the definition and examples of offences, which will be the foundation used to shape officer training which in turn will be pivotal for successful enforcement of the legislation.
480. In its oral evidence to the Committee on 2 July 2020 the PPS highlighted that it had developed new guidelines for prosecuting cases of domestic violence in 2017. It advised that it would update its domestic violence policy to take account of the new legislation and would consult on the changes.
481. The Department, in its written response, advised that, as part of the operationalisation of the offence, and the development of the statutory guidance, which would be published, consideration would be given to its content and it would include examples of abusive behaviour. The guidance would be considered by a multi-agency Task and Finish Group involving key statutory and voluntary sector partners through which a range of views could be reflected. The Department noted that the PSNI would be critical to the development of the guidance, including input from officers on the ground and also confirmed that the PPS would develop guidance for prosecutors.

Committee Consideration of Clause 25

482. The Committee questioned the wording of the Clause and the use of 'may issue' rather than 'must issue' and sought further information on the timescale for the guidance, if it would be periodically reviewed and whether the requirement for reviews should be included in the Bill.
483. Departmental officials assured the Committee that it was fairly standard terminology, the Department would publish guidance and make it publicly available and it would never be the intention not to have guidance available. The aim is to have the guidance finalised by the time the legislation has completed its passage through the Assembly and well in advance of the offence being introduced.
484. The officials outlined that, following the introduction of the offence, there would be formal evaluations and reviews of the policy and consideration would also be given to how it is operating and whether the guidance

needs to be amended. It is likely that the legislation will be reviewed regularly following introduction however once established the timescale may reduce. Putting a requirement to review the guidance at specific intervals in legislation may result in reviews being carried out when not necessarily appropriate or necessary and that may not be helpful.

485. The officials gave a commitment to share the guidance with the Committee in due course.
486. **While the Committee accepts that it may be common drafting in legislation to use the term 'may issue', the Committee believes that it would be better for the clause to state 'will or must' issue guidance given the importance of it to the implementation of this new offence and agreed that a draft amendment should be prepared for consideration.**
487. The Department subsequently advised the Committee that the Minister had agreed to change the word 'may' to 'must' and the Department had asked Counsel to draft an appropriate amendment. The Committee provided its draft amendment to the Department for consideration and the Department subsequently provided alternative wording that would amend Clause 25(1) and 25(3). The amendment provides that the Department must issue guidance on Part 1 of the Bill and such other matters as it considers appropriate, keep the guidance under review and revise it should it consider revision necessary in light of the review. The Department also highlighted that, given the duty imposed, the Interpretation Act (Northern Ireland) 1954 automatically requires the guidance to be revised from time to time as the occasion requires, in the absence of this.
488. **The Committee considers the provision of guidance on the new domestic abuse offence to be a vital component in both the training of the criminal justice agencies and to ensure the consistent and robust implementation of the legislation. While acknowledging that the Department intends to produce guidance the Committee is of the view that the amendment to Clause 25 leaves no room for doubt and welcomes the Minister's agreement to change 'may issue' to 'must issue' in the Clause.**
489. The Committee agreed that it was content with Clause 25 subject to the amendment proposed by the Minister of Justice and the Committee's own amendment to enable the Department to make, by way of

regulations, provision for informing the school of a child who saw, heard or was present during a domestic abuse incident (further details of this amendment are set out at paragraphs 575 to 582 of the report).

Clause 26 - Prohibition of cross-examination in person

490. 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.
491. 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 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.
492. 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.
493. 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.

494. This Clause was broadly welcomed in the evidence received with organisations highlighting that cross-examination of the complainant by the defendant is a key reason why many complainants disengage from court proceedings and it has allowed the continued control and abuse of victims, diminished their ability to give evidence and causes trauma and distress.
495. The Women's Aid Federation, while welcoming the ban on cross-examination, noted that it would only apply where there is a criminal conviction or court order in place and, in other cases, will rely on judicial discretion. The Federation stated that, given the current low reporting to police of domestic violence and abuse, this is concerning and recommended that prohibition should be extended to direct cross-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. The Women's Aid Federation was also concerned that the prohibition would not apply to spent convictions and noted that if a defendant gets probation (which is often the case) then the rehabilitation period can be as little as one year. It requested further clarity around the Regulations.
496. The Women's Policy Group welcomed the provision but is concerned that the ban will only apply where there is a criminal conviction or court order in place and will be subject to the discretion of the judge. The Group is 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.
497. In response the Department advised that the absolute prohibition on cross-examination in person will not only apply where there is a criminal 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 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. 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.

498. The Department indicated that 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.
499. Belfast DSVP, NIPSA and ICTU also 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.
500. The Department clarified that 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. 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.
501. The NIHRC also welcomed this Clause, highlighting that some recommendations from the Gillen Review may also be relevant to court proceedings in domestic abuse cases and it continues to call on 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 include provision for this within Clause 26.

502. The Department advised that, together with partners, it had 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 Northern Ireland. The plan sets out a range of areas where work is being taking forward to address the concerns raised in the Review. Work has commenced in relation to establishing Remote Evidence Centres in Northern Ireland on a phased basis and the 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 also 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.
503. MAP indicated that it supports the proposed changes and understands that Regulations will be brought forward regarding 'specified evidence'. MAP stated that these 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. MAP are not funded to represent men at MARAC and often men who face significant abuse do not have an opportunity to avail of this service. MAP also highlighted 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.
504. The Department advised that it recognises that the protection of victims needs to be balanced with the need to ensure fairness in the proceedings for all parties and it anticipates 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.

505. The Bar welcomed the intention behind this part of the Bill however noted 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 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.

506. The Bar stated 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. It 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. The Bar indicated 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. Noting that Article 11C(4) and (5) provide that a 'protective injunction' will be one specified in Regulations made by the Department of Justice it 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. It also notes that it will be necessary for the Department to describe 'specified evidence' in further detail in Regulations.

507. While welcoming Article 11G the Bar highlighted that the Bill does not fully recognise the marked increase in the number of personal litigants in the family courts and the impact 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 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. The Bar questions 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. 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.
508. The Bar also stated that 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.
509. The Department indicated that 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 - new Article 11B to be inserted in the Family Law (Northern Ireland) Order 1993. It 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 considers that the protection of victims needs to be balanced with the need to ensure fairness in the proceedings for all parties. The court's discretion to prohibit cross-

examination in person will apply in cases where an absolute prohibition does not apply.

510. It also outlined that 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.

511. According to the Department 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. The Department intends to consult before making any Regulations under this power.

512. The Department highlighted that the NI Courts and Tribunals Service has produced guidance to assist personal litigants in court and it is for the court hearing the proceedings to address any unacceptable behaviour by a personal litigant. It also outlined that, 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. 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. 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.

Committee Consideration of Clause 26

513. The Committee sought clarification from the Department regarding the automatic prohibition to apply where there is other specified evidence of domestic abuse.
514. The Department outlined that the other types of evidence will be specified in Regulations and a consultation on which types of evidence should lead to an automatic prohibition will be undertaken.
515. The Department advised the Committee it was considering a proposed amendment to provide for a court hearing civil proceedings to have a discretionary power to prohibit cross-examination in person. The new provision would broadly replicate for civil proceedings the provision in Clause 26 giving a court hearing family proceedings a discretionary power to prohibit cross-examination in person if certain conditions are met. The proposed amendment would be limited to a judicial discretion rather than including any automatic ban due to the much broader types of case that come within the scope of civil proceedings. The new provision would also give a court hearing civil proceedings the power to appoint a legal representative funded by the Department to carry out the cross-examination instead and guidance would be issued about the scope and nature of their role in proceedings.
516. The Department also informed the Committee of a proposed minor amendment to Clause 26 to require a court considering whether to exercise its discretionary power to prohibit cross-examination in person to have regard to findings of fact made in civil or criminal proceedings as well as family proceedings. The Department subsequently provided the text of both amendments.
517. **The Committee agreed that it is content with Clause 26 subject to the minor amendment proposed by the Minister of Justice. The Committee**

also agreed to support the amendment proposed by the Minister of Justice to add a new clause to the Bill to provide for a court hearing civil proceedings to have a discretionary power to prohibit cross-examination in person.

Clause 27 - Commencement

518. Clause 27 makes provision for the commencement of the provisions of the Bill and gives the Department of Justice powers to make such transitional, transitory or savings provisions as the Department considers appropriate when bringing those provisions into operation.

519. **The Committee agreed that it is content with Clause 27 as drafted.**

Clause 28 - Short title

520. Clause 28 provides for the short title of the Bill.

521. **The Committee agreed that it is content with Clause 28 as drafted.**

Implementation of the Legislation

522. One of the consistent themes running through the evidence received by the Committee related to the importance of how the legislation will be implemented.

523. Victim Support NI stated “our laws are only as good as their practical implementation” and Barnardo’s NI said “how the legislation is implemented is as important as what the law contains”. These views were echoed by many other organisations and individuals.

524. The Committee believes that, for this legislation to be effective and achieve the desired result of better protection and criminal justice outcomes for victims of domestic violence and abuse, getting the implementation right in terms of training, monitoring, reporting and public awareness is crucial.

Reporting

525. **Given the need to ensure that this legislation is implemented properly and is operating effectively the Committee intends to bring forward an amendment to the Bill at Consideration Stage to place a requirement on the Department of Justice to report on the operation of the offence. This will provide for the effectiveness of the legislation to be monitored and assessed in a transparent manner.**

526. The amendment will require the Department to report on the operation of the domestic abuse offence and the aggravating factors provided for in Clauses 8, 9 and 15 in a range of areas including number of cases taken, number of convictions, the average length of time for cases, the experiences of witnesses, the provision of the guidance under Clause

25 and the communication strategies to raise public awareness. The first report must be available no more than two years after the commencement of the legislation and the report must be laid in the NI Assembly and published. Further reports are required no less than every three years.

527. The Committee considered including a requirement to report in relation to the Section 75 groups but did not pursue this following advice that this may take the amendment beyond the reasonable limits of the Bill's collective purposes.

The text of the amendment is:

Report on the operation of this Act

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

—

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

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

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

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

(b) *the number of convictions in criminal proceedings,*

(c) *the average length of time—*

(i) *from service of the complaint or indictment,*

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

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

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

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

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

(5) *The report must also include —*

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

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

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

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

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

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

(7) The Department must—

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

(b) arrange for it to be published.

Data Collection and Reporting

528. The importance of strengthening data collection regarding incidents of domestic abuse and violence in general and more specifically in relation to the implementation of the legislation was raised by a number of organisations.

529. The views of NIWEP, who stated that robust, high quality data is essential both for monitoring how the legislation is being implemented and for developing appropriate policy responses and services, is reflective of the comments received.

530. Organisations including the Equality Commission and the NIHRC highlighted the need to strengthen data collection regarding domestic violence and abuse to address the knowledge deficit on the nature, extent and impact of it on each of the Section 75 equality groups. The data collected and published should be disaggregated by sex, gender, ethnicity, disability and age.

531. Organisations representing children and young people including the CLC also recommended the implementation of the UN Committee on the Rights of the Child in relation to strengthening the systematic collection of data on violence against children including domestic

violence.

532. The evidence received by the Committee also emphasised the need for data to track the journey of abuse investigations through the criminal justice system including the number of initial reports, the number of referrals to the PPS, how many reach different stages of the court process, how many reach prosecution, what is the resulting remedy and how many involve repeat offences, to enable accurate assessment of the effectiveness of the system.

533. The Department advised the Committee that it recognises the importance of robust data and is reviewing this in relation to the new offence. How best to secure this, and what will be reported on, is being considered in conjunction with partner agencies as part of the operationalisation of the new offence but the Department has indicated that it is unlikely to be possible to record the level of detail some organisations have outlined at an individual victim level.

534. The Department indicated that a range of information is already (or will be) available such as incidents to the police, applications for protection orders, number of convictions and higher level information in relation to the length of processes.

535. The Department highlighted that PSNI Statistics Branch currently publishes domestic abuse crimes disaggregated by sex/gender and ethnicity but statistical information on disability and sexual orientation is not available for publication. In relation to the issue of further data collection on Section 75 groups for all crime, the PSNI has been in contact with the Equality Commission.

536. PSNI Statistics Branch also publish a range of information on offences

where the victim is under 18, including offences with a domestic abuse motivation and the outcomes of crimes with a domestic abuse motivation (Annual Bulletin on Outcomes of Crimes Recorded by the police).

537. The Committee recognises the importance of the availability of robust data to enable the effectiveness of this legislation to be assessed. The data will also need to be consistent across the various criminal justice agencies to allow for tracking of cases and analysis at each stage of the process and to enable the Department to fulfil its duty to report on the operation of the offence as provided for by the Committee's amendment outlined earlier in this section of the report.

538. The Committee has therefore decided to bring forward the following amendment to the Bill at Consideration Stage to provide for the Department to issue guidance on the type of information required:

After Clause 25 insert –

Guidance on data collection

25A (1) *The Department of Justice—*

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

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

(2) *The relevant bodies are—*

(a) Police Service of Northern Ireland

(b) Public Prosecution Service Northern Ireland,

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

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

Training

539. A wide range of organisations highlighted the need for comprehensive training for anyone involved in gathering evidence, prosecuting and enforcing the new law and expressed the view that the legislation will only be effective if this takes place. It is also considered essential that all front-line police officers and criminal justice agencies understand what coercive control is and are able to recognise and identify the signs of coercive and controlling abusive behaviour.

540. The Women's Aid Federation called for appropriate investment in training for the PSNI and all legal professionals including the PPS and the judiciary and also highlighted the need for specific training for the police and first responders to domestic violence and abuse incidents to ensure better evidence is gathered to enable more cases to progress through the criminal justice system.

541. Victim Support NI is of the view that training of all agencies involved in the prosecution (and defence) of the new offence will be as important as passing the law itself and recommends that there is a legislative requirement for training of all first responders to ensure that they are able to recognise the behaviours that potentially breach the new law. It also recommends that a legal requirement should be added for expert-led training to be put in place for all legal practitioners who may be involved in prosecuting and defending domestic abuse cases, including judges.

542. A number of other organisations including HERe NI/ Cara-Friend, the Women's Resource and Development Agency and NIACRO recommended mandatory training for the PSNI and the judiciary and the Committee for Health recommended that statutory guidance and associated training should be provided to front-line responders

specifically on the implementation of the child aggravator clauses.

543. Views were also expressed that the training needs to cover specific issues including the impact of domestic violence and abuse on women and children, a wider understanding of men as victims of domestic violence and abuse, the particular needs of different groups of people including LGBT and other marginalised and vulnerable groups such as migrant victims and obligations to report and take appropriate action in suspected cases of domestic violence and abuse affecting children.
544. The involvement of specialist domestic violence service providers such as Women's Aid in the delivery of the training was suggested by some organisations as being beneficial.
545. The Department of Justice advised the Committee that it recognises the importance of training but does not consider that a requirement for it needs to be placed in statute.
546. The Department outlined that discussions are 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. Comments received by the Department when it consulted on options for legislation to protect victims of domestic abuse from being cross-examined by perpetrators in person in family proceedings regarding the need to ensure consistency in the use of any discretionary power to prohibit cross-examination in person have also been shared with the Judicial Studies Board.
547. In relation to the police the Department stated that the PSNI continually train officers in regard to domestic abuse and, as a result of the 2019 Domestic Violence and Abuse Thematic Inspection by CJINI, the PSNI

are developing a new training programme focusing on the training of new officers and first responders in regards to domestic abuse. The Department also advised that the PPS will be delivering domestic abuse training to all lawyers, both internal and external counsel, to cover the new aspects of the legislation. It is intended that there will also be specialist training, most likely provided by specialist organisations, to focus on the impact and effects of coercive and controlling behaviour on victims.

548. The PSNI, in its written submission to the Committee, recognised that officer training on the definition of the new offence and examples of the behaviours it involves will be pivotal for the successful enforcement of the legislation. The Chief Constable, when he attended the meeting of the Committee on 24 September 2020, also outlined the training being developed, in conjunction with Women's Aid Federation, to familiarise front-line officers with what coercive and controlling behaviour looks like. The training, which will be a mixture of on-line and classroom-based training, will be rolled out from December. Particular roles will also receive specialist training where required.

549. The PPS, in its written and oral evidence, advised that it was considering the establishment of specialist domestic violence and abuse prosecutors to dovetail with the new legislation. It was envisaged that these prosecutors would receive more intense training in relation to coercive control and the identification of patterns of domestic abuse behaviours. They would also act as the first point of contact for police to assist in providing prosecutorial advice and ensure all reasonable lines of enquiry are pursued to maximise the opportunities for bringing fair but robust prosecutions.

550. **The Committee views training for the PSNI, PPS and judiciary as crucial**

to the effective implementation of this legislation given the new offence is a course of behaviour offence which will require the exercise of judgement by the police when gathering evidence and a clear understanding and recognition of the behaviours associated with non-physical abuse for others involved in the prosecution and enforcement of the new law. The Committee believes that, given its importance to the effective operation of the legislation, there should be a mandatory requirement in relation to training and agreed to bring forward the following amendment at Consideration Stage to provide for this:

Training

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

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

(2) Training must be provided annually.

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

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

551. While recognising that the Lord Chief Justice holds responsibility for the arrangements for training of the judiciary of Northern Ireland and therefore inclusion of the judiciary in the amendment would not be appropriate, the Committee would emphasise the need for awareness raising and training for the judiciary in relation to the new offence and would encourage the Department to continue to discuss this with the Judicial Studies Board.

Public Awareness

552. Many of the organisations have highlighted that a public awareness campaign/communications strategy to enable the public to understand what is now criminal behaviour under the law, the nature of the new offence and its impact on victims will be vital if the legislation is to have the desired effect. This will be particularly important for vulnerable or hard to reach groups including communities where English is not a first language.

553. The evidence indicates that the campaign needs to be:

- Multi-lingual
- Reflect a variety of relationships in a campaign across multiple platforms
- Reach out to younger people experiencing domestic abuse who currently do not see themselves reflected in the public conversation
- tailored to represent the diverse backgrounds and experience of domestic abuse
- specifically directed at groups which are less likely to report experiences of domestic abuse such as LGBT people
- be co-developed with specialist community-based organisations

554. Views were also expressed that the campaign could highlight avenues of support for victims including how to seek help through the PSNI, how to access emergency accommodation and how to access domestic violence and abuse support organisations.

555. The Department has advised the Committee that a multi-agency Task and Finish Group will consider how best awareness raising can be progressed. This will include both statutory as well as voluntary and community sector partners. The guidance associated with the new offence, as well as an advertising campaign, will be important in terms

of raising awareness around what constitutes domestic abuse and examples of behaviours that could be captured by the new offence.

556. 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 including the fact that domestic abuse can affect anyone, regardless of gender or sexual orientation.
557. The campaign will be across multiple platforms in order to reach vulnerable and hard to reach groups and consideration can be given to how best information can be disseminated within hard to reach groups and those for whom English is not their first language. Similar to the previous campaign it will clearly advise how support can be accessed, encouraging those affected to report to the police or contact the 24 hour domestic and sexual abuse helpline.
558. The Department will consider the views of voluntary and community sector organisations, which specialise in domestic abuse, as part of the development of the campaign. It also highlighted that 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.
- 559. The Committee agrees that raising public awareness and recognition of the new offence will be very important and it welcomes the work the Department intends to undertake in this area.**
- 560. While legislation in this area is not required the Committee has included a requirement for the Department to report on the strategies to communicate the new offence to the public and victims as part of its reporting obligations on the operation of the offence.**

Other Issues Raised in the Evidence Received by the Committee Not Currently Covered in the Bill

561. A wide range of other issues relating to the offence of domestic abuse and the provision of support and assistance to victims that are not currently covered in the Bill were raised in the evidence received by the Committee. Some of the issues fall within the responsibilities of Ministers other than the Minister of Justice.

562. The Committee welcomes the information and views provided on these and sought clarification from the Department of Justice and other relevant departments on the current position in relation to them. The written responses can be found at Appendices 4 and 5.

563. The distinct criminal justice purposes of the Domestic Abuse and Family Proceedings Bill limits the opportunity to take many of these forward in this legislation. However, the Committee intends to continue to make domestic abuse one of its priority areas of work and will pursue these issues and monitor the position on each of them on a regular basis. There may well be other legislative opportunities in this mandate to address some of the issues if the Committee believes that sufficient progress has not been made.

564. Domestic abuse is a societal issue and the actions needed to support victims of domestic violence and abuse and encourage them to leave abusive situations are not solely the responsibility of the Department of Justice. A much wider range of Departments have a role to play as well.

565. The Committee considered a number of the issues in more detail and these are outlined in the following paragraphs.

Domestic Abuse Prevention Notices and Orders

566. The Department of Justice took legislative powers to provide for Domestic Violence Protection Notices and Orders (DVPN/O's) in the Justice (Northern Ireland) Act 2015 however, due to a number of reasons, they have never been introduced. These are now being replaced in England and Wales by new Domestic Abuse and Protection Notices and Orders (DAPN/O's) to address the broader definition of domestic abuse that is being introduced there and to make other changes to address some of operational shortcomings experienced in relation to DVPN/O's.
567. In the evidence received by the Committee recognition of the limitations of DVPN/O's and support for the introduction of Domestic Abuse Protection Notices (DAPN's) and Domestic Abuse Protection Orders (DAPO's) came from a range of organisations including statutory organisations, advocacy groups and trade unions. The NI Policing Board is also of the view that there would be considerable merit in the introduction of notices to provide victims with protection for a period of time after an incident and allow time for them to consider their next steps. CJINI believes that it is important that protection orders are appropriate and accessible to victims of a new domestic abuse offence. Women's Regional Development Agency included DAPN's and DAPO's within a list of the protective measures that are or will be available elsewhere in the UK that do not current apply in Northern Ireland.
568. While some of the organisations noted that the Department was considering progressing this matter in a future piece of legislation others, such as the Rainbow Project and the Belfast DVSP, believe that they should be included within this Bill. The Performance Committee of the Northern Ireland Policing Board also recently wrote to the

Committee regarding the gap caused by the absence of DAPN's and DAPO's.

569. The Committee sought the views of the PSNI on whether there should be provision in the Domestic Abuse and Family Proceedings Bill for DAPN/O's and the potential benefits for victims of domestic violence and abuse. In its response the PSNI highlighted concerns regarding the existing DVPN/O's currently in operation in England and Wales and suggested that further formal consultation in determining the most effective way ahead in Northern Ireland would be beneficial.

570. The Minister of Justice wrote to the Committee on 24 September 2020 to advise that, given the concerns expressed by the statutory and voluntary and community sector bodies during discussions, and the issues evident from the use of DVPN/O's in England and Wales she did not believe they should be introduced in Northern Ireland at this time. Instead, the Department will focus on policy development related to the new DAPN/O's. Due to policy and operational lead-in time required, the Minister advised that legislative provisions will be taken forward at the amendment stage of the forthcoming Justice (Miscellaneous Provisions) Bill.

571. **The Committee recognises the benefits of the Notices and Orders in terms of providing short term protection to victims and notes that the CJINI Thematic Inspection Report of the handling of domestic violence and abuse cases by the Criminal Justice System in NI in 2019 urged progress on the issue of protection notices.**

572. **The Committee supports the introduction of DAPN/O's and understands there is a need to develop the policy in this regard and identify the most appropriate option for Northern Ireland. However, the Committee is**

concerned about the length of time Northern Ireland has already been without any form of these protection notices and does not find any reassurance in the fact that legislative provision for such notices is only going to be advanced during the progression of the proposed Justice Miscellaneous Provisions Bill. The Committee has therefore agreed to bring forward the following amendment to place a duty on the Minister to provide for a scheme within 24 months of commencement of this legislation:

Interim protection for the victim

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

(2) *The regulations may include provisions about—*

(a) *court orders*

(b) *measures other than court orders*

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

573. Rather than being prescriptive the Committee amendment provides for the details of such a scheme to be set out in Regulations thus enabling the Department to identify the most appropriate scheme for Northern Ireland.

Operation Encompass

574. The Chief Constable raised Operation Encompass when he gave oral evidence to the Committee on 13 February 2020. He stated there were legislative impediments to the implementation of such a programme whereby the PSNI may be able to share information in relation to child protection, but not information on the grounds of welfare and well-being. The Chief Constable advised that it was a programme that he would wish to see brought to fruition here with the support and help of the Committee and other partners.

575. In their evidence to the Committee, a number of organisations have highlighted their support for the introduction of Operation Encompass in Northern Ireland including Mid and East Antrim Borough Council, Women's Aid Federation, Belfast DSVP, South Eastern DSVP and SEHSCT. CiNI point out that it will safeguard children and young people by directly connecting police with schools to ensure better outcomes for children who are either subject to or witness police-attended incidents of domestic abuse. CJINI believes that it is complementary to the intentions of the Bill and merits consideration.
576. The CLC is also supportive of legislation which would allow information sharing, but is of the view that this should not be limited to between PSNI and schools and should include Health and Social Care and the judiciary as appropriate. CLC stressed that, in any event, information sharing should be done in a way that is compliant with both GDPR and children's rights.
577. The Committee was informed that the SBNI has been chairing a cross-departmental/agency Task and Finish Group examining the potential introduction of Operation Encompass in Northern Ireland. It has stated that the Task and Finish Group is satisfied such a programme would be of support to child victims of domestic abuse. However, the SBNI advised that - as the Committee had previously heard from the Chief Constable - the sharing of information between the police and education staff where the incident does not meet the 'child protection' threshold is not possible under the current legislative framework here.
578. The Committee requested further information on Operation Encompass from the Department of Justice and this was provided in its correspondence of 26 June 2020 and in its more detailed paper of 8

July 2020. The Department outlined that Operation Encompass is in place in over two thirds of police forces in England and Wales. Schools are informed when police have attended an incident of domestic abuse, which enables the school to provide support to those children depending on their needs and wishes. Support within the school environment means children are better safeguarded against the short, medium and long-term effects of domestic abuse. The Department stated that “the purpose of the model is to ensure better outcomes for children who are subject, or witness, to police attended incidents of domestic abuse. It ensures that schools are in a better position to understand and be supportive of the child’s needs, and possible behaviours, as a result of this.”

579. The Department also provided information on the work of the Task and Finish Group led by SBNI and advised that a pilot scheme will run in the Down sector of Newry, Mourne and Down District Council area later in 2020 which, given the absence of necessary legislative cover, will operate on a consent basis. In correspondence to the Committee on 28 September 2020, the Chair of the South Eastern Area Domestic and Sexual Violence Partnership covering the locality where the initiative will be piloted, advised that the Partnership is keen to have it rolled out in NI and agreed to the pilot in that area. However, there will be limitations as the pilot will be operating on a consent basis, so the PSNI will only be able to notify a school where there is concern for the well-being of a child if they have the consent of the victim to do so. The Partnership believes that there may be less notifications made as a consequence and the victim could be at greater risk if the perpetrator learns that they gave their consent for the notification to be made.

580. The SBNI would welcome the necessary legislative provision to facilitate information sharing for the purposes of an Operation Encompass type of

initiative being included in the Domestic Abuse and Family Proceedings Bill. The EA believes that the inclusion of the necessary provisions would strengthen the Bill while the Policing Board considers it a possible gap in the legislation. However, in its correspondence of 8 July 2020, the Department of Justice advised that, as the purpose of the information sharing is to ensure child well-being and the delivery will be in an educational setting, it considered that it is a matter for the Department of Education to address in legislation rather than the Department of Justice. Discussions are therefore ongoing with officials in that Department to determine the appropriate legislative vehicle for the changes.

581. The Committee is very supportive of the introduction of this type of information sharing scheme to Northern Ireland and believes that legislative provision to enable the PSNI to share information with a school on welfare/well-being grounds to support children in the context of domestic abuse should be provided at the earliest opportunity. The Committee therefore intends to bring forward the following amendment:

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

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

Domestic Abuse Commissioner/ Champion/ Victim of Crime Commissioner

582. A wide range of organisations including Women's Aid Federation and the other women's organisations, the NI Policing Board, NSPCC, NIACRO, and the Rainbow Project, are advocating for a Domestic Abuse Commissioner believing it could play a key role in supporting the sector, the PSNI and the judiciary and holding the government to

account.

583. Many of them noted the inclusion of a Domestic Abuse Commissioner in the Westminster Domestic Abuse Bill and support the calls of Women's Aid Federation NI for the introduction of such a Commissioner in Northern Ireland.

584. A range of possible functions for the Commissioner has been highlighted in the evidence received and these include:

- An accountability mechanism for scrutinising legislation, policy, practice, commissioning, funding and provision
- Monitoring and evaluation of the provision of services
- Oversee and scrutinise the implementation of this legislation to ensure effectiveness
- Input into training across the criminal justice system
- The provision of public leadership on domestic violence and abuse
- Oversee other on-going developments e.g. domestic homicide review introduction, the proposed Specialist Domestic Violence court in Belfast etc.
- Making recommendations for improvements
- Communication and information sharing role
- Advocating on behalf of victims
- Provision of research and visibility to the particular domestic abuse experiences of LGBT victims.

585. The NIHRC advised that without the provision of a DA Commissioner the Department needs to find alternative ways of fulfilling obligations contained within the Istanbul Convention concerning data collection and research, awareness raising, education and training of professionals.

586. Victim Support NI considered the issue in the context that Northern Ireland does not have a Victims' Commissioner for victims of any non-

Troubles related crime and is therefore of the view that it would benefit society most and be most cost-effective to create a post of Victims' Commissioner with sufficient powers and resources to hold agencies to account and act as a champion for all victims of crime including domestic abuse.

587. The Presbyterian Church recommends the creation of a Domestic Abuse Champion role that might act as a critical friend back to government and be a strong, independent voice for the sector and suggests there may be learning from the appointment of the Mental Health Champion which could be transferred to this area.
588. The Committee for Health recommends that consideration be given to the introduction of a Victims' Advocate and/or a Domestic Abuse Commissioner.
589. Following its oral evidence session on the Domestic Abuse and Family Proceedings Bill on 11 June 2020, the Women's Aid Federation wrote to the Committee providing further commentary supporting the appointment of a Commissioner for Domestic Abuse and indicating that it does not believe a single Victims' Commissioner is the best option for domestic abuse victims.
590. The Minister of Justice had indicated that she was not minded to take forward the appointment of a Domestic Abuse Commissioner. Having considered the matter further, in June the Minister advised the Committee that she was minded to develop a model for a Victims of Crime Commissioner, with a specific role in regard to taking cognisance of, and providing a focus on, victims with specific vulnerabilities such as domestic abuse. In considering the best way forward, the Minister advised that she had taken account of the size of Northern Ireland, the significant number of unitary statutory and voluntary sector service

providers and the close and robust working relationships the Department had with its key stakeholders.

591. The Committee appreciates the benefits that a stand-alone Domestic Abuse Commissioner could bring, particularly in providing independent oversight of the implementation of this legislation, contributing to the development of the guidance and training, advocating on behalf of victims and monitoring and evaluating the provision of services. The Committee is sympathetic to the calls for the appointment of a Domestic Abuse Commissioner however one Member, Mr Doug Beattie MLA, indicated that his preference was for a Victims' of Crime Commissioner.

592. The Committee agreed that an amendment should be prepared to establish a Commissioner for Domestic Abuse. Following further consideration and advice the Committee decided not to take forward this amendment given the constraints relating to the purposes of the Bill.

593. The Committee therefore agreed to bring forward an amendment to provide for independent oversight of and reporting on the implementation of the legislation for a period of at least seven years. The amendment requires the Department of Justice to appoint an independent person within one year of commencement of the legislation:

Independent oversight

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

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

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

(3) The Department must—

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

(b) arrange for it to be published.

(4) The Department may by regulations set out the date, not less than 7 years after commencement, when the independent person may cease the duties in Subsections (1) and (2).

(5) Starting on the date when the independent person ceases duties, the Department must publish a report on subsection (1)(b) every 3 years thereafter.

Housing Issues and Secure Tenancies

595. Domestic violence and abuse is one of the leading causes of homelessness and a number of organisations noted that there is no mention of the issues relating to housing matters including secure tenancies in the Bill.
596. The Women's Aid Federation advised that housing is a major concern for many women who are thinking of leaving or who have left abusive relationships and in its written submission highlighted a range of issues.
597. The Committee for Communities took evidence from Women's Aid Federation specifically on these issues. The Committee for Communities accepts that the provision of emergency refuge accommodation and floating support services is central to the prevention and protection of women and children from domestic abuse and is of the view that the absence of any reference to housing in the Domestic Abuse and Family Proceedings Bill is a significant oversight and embeds a 'silo' approach to legislation that may ultimately undermine its effectiveness.
598. MAP stated that male victims in Northern Ireland do not have any access to refuge accommodation or the floating support which allows victims to become survivors and sometimes retain their own home.
599. NSPCC believes the Bill should include a duty on local authorities to provide support to adult and child survivors in accommodation-based

services, like refuges, similar to that in the Westminster Domestic Abuse Bill, though it should not be limited to accommodation services only.

600. The Committee for Health, having heard from organisations representing victims of domestic abuse of the importance of secure housing, recommended that consideration be given to legislating for secure tenancies for victims of domestic abuse.

601. The Committee for Communities acknowledges that responsibility for housing falls to the Minister for Communities and therefore may lie outside the purpose of the Bill. The Communities Committee believes the inclusion of commentary in a revised Explanatory Memorandum which reflects the importance of safe and secure homes in the prevention and protection of women and children from domestic abuse is essential.

602. The Department of Justice advised the Committee that, following the second stage debate on the Bill, the Justice Minister wrote to the Minister for Communities Deirdre Hargey asking whether provision would be made in relation to secure tenancies similar to that contained in the Westminster Domestic Abuse Bill. In response Minister Hargey advised that, given the clear differences between current structures here in terms of local government responsibility for housing and homelessness and social care services, when compared to England, she was content that it was not necessary to replicate those provisions in Northern Ireland but she intended to review the position.

603. In September the Committee was advised that the Communities Minister had asked her officials to initiate a review of the introductory tenancy scheme. If the review considers that change is needed (in the context of secure tenancies) a legislative vehicle should be available to take this forward in the current Assembly mandate.

604. The Committee appreciates the importance of the availability of safe and secure housing for victims of domestic violence and abuse, the absence of which often prevents them from leaving an abusive relationship and wants to see the issues outlined in the evidence addressed. While the Committee explored the potential for an amendment to place a duty on the Housing Executive and/or the Department for Communities in relation to this matter it is aware that housing matters are beyond the reasonable limits of the Domestic Abuse and Family Proceedings Bill's collective purposes.

605. The Committee therefore welcomes the commitment from the Minister for Communities to review the position in relation to secure tenancies and if necessary, take forward any legislative changes within this mandate.

Paid Special Leave for Victims for those affected by domestic abuse

606. A number of organisations including Onus, NIWEP, ICTU, and PCS raised the issue of paid leave for victims of domestic abuse and how victims should not have to take holiday time off work, unpaid leave or sick leave to deal with either court appearances or for recovery from the trauma of experiencing domestic abuse.

607. The Women's Advocacy Project believes that this Bill should include a provision similar to the Republic of Ireland who recently implemented legislation for 10 days domestic violence related leave.

608. The Committee for Health also supports the introduction of paid leave to facilitate victims of domestic abuse in making arrangements to separate from their partner.

609. The Department of Justice advised the Committee that this issue falls

within the remit of the Department for the Economy and the Minister of Justice had written to Minister Dodds seeking her views on the matter. The Department subsequently advised that Minister Dodds has asked her officials to give consideration to this issue alongside a range of other employment related matters as part of a longer term vision for employment relations in NI. Minister Dodds has advised that if there is a consensus that legislative provision is required, then her Department will identify a suitable legislative vehicle.

610. The Department has also highlighted that a review is being undertaken by the Whitehall Department for Business, Energy and Industrial Strategy which will include support in the workplace for survivors of domestic abuse and the Minister has written advising that the Department of Justice wishes to contribute to the Review and take part in any roundtable discussions set up in NI.

611. **The Committee is supportive of this initiative and welcomes the commitment from the Minister for the Economy to consider the issue of paid special leave for victims of domestic abuse. While the Committee considered bringing forward an amendment to provide for this it decided not to do so bearing in mind the purposes of the Bill.**

Hardship Fund

612. Aware of the difficulties faced by victims of domestic abuse in the immediate period after they have left an abusive relationship the Committee considered whether it would be possible to provide for support through some form of an emergency bridging hardship fund until access to other income streams became available.

613. Having taken advice and noting that the issue fell outside the purposes of the Bill the Committee agreed not to pursue the matter within the context of the Bill.

Stalking Legislation

614. A wide range of organisations have highlighted that there is still no legislative provision in Northern Ireland for the offence of stalking and many want this introduced without further delay to ensure effective protection for victims or potential victims.

615. Women's Aid Federation stated that stalking is much more likely to occur within the context of domestic violence or a previously established relationship or be perpetrated by someone who is known in some way to the victim and called on the Committee to consider the need for stalking legislation as this is a huge gap in legal provisions available to those experiencing domestic violence and abuse in Northern Ireland.

616. The Women's Advocacy Project @ Dove House also stated that stalking has clear and identifiable links with domestic abuse. Due to the close links between stalking and domestic abuse in its view stalking should be covered in this legislation.

617. The SEDSVP also highlighted the gap in legislation with regard to stalking and indicated that research highlights that stalking is a factor in more than 90% of domestic homicides. In its view it is a serious omission not to have legislation in place to address this aspect of domestic violence but recognises there is a commitment from the Minister of Justice to bring forward separate legislation.

618. The Department of Justice advised the Committee in June that it was planning for the introduction of the Stalking Bill to the Assembly in

September/October 2020.

619. The Committee is of the view that the deficit of legislative provision in relation to the offence of stalking must be addressed at the earliest opportunity. Any amendment to the Domestic Abuse and Family Proceedings Bill could only cover stalking in the context of domestic abuse and while the Committee appreciates that stalking within this context is prevalent the Committee is of the view that it would be preferable to cover all forms of stalking in the same piece of legislation. The Committee therefore sought confirmation from the Department of Justice that it was on course regarding the timescale for the introduction of the Stalking Bill. The Department advised that urgent work on Coronavirus legislation and remote working had impacted on the original timescale and the Bill is now expected to be introduced to the Assembly in November 2020.

Coercive Abortions

620. In its written and oral evidence on the Bill, Evangelical Alliance indicated that it is aware of a gap in the Northern Ireland legislation around coercive abortions since the law was changed in October 2019 and asked if a provision could be added specifically to include protection of vulnerable women (and their unborn children) in situations where there is coercion, physical or non-physical, to end the pregnancy through abortion.

621. The Committee sought clarification from the Department on the position in this regard. The Department responded advising that it considers that section 24 of the Offences Against the Person Act 1861 (administering poison or noxious thing so as to endanger life or inflict grievous bodily harm; or with intent to injure, grieve or annoy) is sufficiently broad to capture within its remit a situation where a pregnant woman was coerced

to take abortion pills without her consent, or where they were administered without her knowledge.

622. Section 24 of the OAPA 1861 provides for an offence of unlawfully and maliciously administering or causing to be administered to or taken by any other person any poison or other destructive or noxious thing, with intent to injure, aggrieve or annoy such person. Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing, with intent to injure, aggrieve, or annoy such person, shall be guilty of a misdemeanor.

623. The Department indicated that decisions on prosecution under this offence would be a matter for the Public Prosecution Service.

624. **The Committee noted the information provided by the Department.**

Child Contact Orders

625. A number of organisations raised issues regarding child contact orders. This issue was also covered during the private meetings Committee Members held with individuals.

626. The evidence received by the Committee illustrated experiences of child contact orders being used on the one hand to exert further control by 'plausibly' changing contact arrangements with little or no notice with the aim of undermining the independence of the person or to decrease their free time with which to work, pursue new friendships or relationships and on the other using the lack of expedience and consequence in the system to their advantage by not abiding by court orders and frustrating attempts to have contact with children.

627. Relate NI stated that links between domestic abuse and wider family proceedings merits attention, including how the safety of those who experience abuse, both partner and child, are prioritised through child contact arrangements.
628. The SEHSCT stated that contact should be provided to promote a positive bond between child and parent however an assessment of risks related to domestic violence, coercion and control should be considered in relation to contact between a parent and child.
629. The Women's Advocacy Project stated that many family court decisions will allow for a child to have unsupervised contact with an alleged perpetrator, when they may already be on bail for committing violent offences against the victim. This is putting the child at unnecessary harm and a real source of worry for a parent.
630. MAP drew attention to the fact that, when contact orders are 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 child and parent cannot continue to be ignored.
631. Women's Aid Federation advised that child contact is a major concern and their groups across Northern Ireland repeatedly have issues with regard to the process. Supported by a range of other women's organisations, Women's Aid Federation have recommended that an urgent review should take place to improve the safety of child contact through a range of measures including:
- Prohibiting unsupervised contact for a parent on bail for domestic violence and abuse related offences or where there are ongoing criminal proceedings for domestic abuse

- A change in the law to ensure that child contact arrangements in cases of domestic violence and abuse are decided on an informed judgement of what's in the best interests of the child and not on the presumption of parental involvement.

632. The Department of Justice indicated that the Department of Finance is responsible for the substantive law on private family law matters including contact with a child.

633. The Department outlined that under the Children (Northern Ireland) Order 1995, the welfare of the child is the court's paramount consideration in determining any application for contact and in considering the child's best interests the court is specifically required to have regard to any harm which the child has suffered or is at risk of suffering. In addition, where a court is considering whether to make a contact order in favour of a party who is subject to a non-molestation order (or against whom the court is considering making such an order) under Article 12A of the Children (Northern Ireland) Order 1995, the court is specifically required to consider whether the child has suffered, or is at risk of suffering any harm through seeing or hearing ill-treatment of another by that party. The Department's proposed amendment to the Bill will amend Article 12A of the 1995 Order so that a court will be required to have regard to any conviction of a party for a domestic abuse offence that was aggravated by reason of involving a child, when considering whether to make a contact (or residence) order in favour of that party in relation to the child.

634. The Department also advised that there is no statutory presumption of contact in Northern Ireland such as there is in England and Wales. The Gillen Review of Family Justice 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 would set out what the court is required to do in any case in which it is alleged or admitted, or there is other reason to believe, that the child or a party has experienced domestic abuse perpetrated by another party, or that there is a risk of such abuse. This recommendation is for the judiciary to consider.

635. The evidence received by the Committee illustrates that there are substantial issues with child contact orders as they currently operate. The Committee intends to return to this issue as part of its on-going work in relation to domestic violence and abuse.

Non Fatal and Fatal Strangulation/ Rough Sex Defence

636. Organisations including Women's Aid, HERe NI/ Cara-Friend, Women's Policy Group, Women's Resource and Development Agency, Relate NI, MAP and Belfast DVSP have highlighted that currently there is no specific legal means to adequately tackle non-fatal strangulation and choking offences and they have called for the legal framework to be strengthened and a specific criminal offence introduced as part of the review of domestic violence legislation either in this Bill or in subsequent legislation. Reference was also made to the New Zealand law on strangulation which came into force in December 2018.

637. CJINI recommended in its Report 'No Excuse: A Thematic Inspection of the handling of domestic violence and abuse cases by the criminal justice system in NI' published in June 2019 that "the Department of Justice should review, with input from relevant stakeholders, how potential inadequacies in current legislation regarding the act of choking or strangulation by defendants could be addressed".

638. The PPS also recognises the prevalence of non-fatal strangulation within domestic abuse but indicates that, despite the seriousness of these types

of assault, non-fatal strangulation is very difficult to prosecute. It is contributing to work on legislative and non-legislative measures to address it and the PPS Policy and Information Unit has updated the services internal guidance on non-fatal strangulation to take account of the recent Court of Appeal decision.

639. The South Eastern DSVP highlighted its concerns that a mitigation of “rough sex gone wrong” appears to be increasingly used in domestic homicides to explain a death and needs to be challenged. It stated that acts of non-fatal strangulation are explained as consensual acts and this is unacceptable and needs to be addressed.
640. The Department advised, in correspondence dated 26 June 2020, that the Minister has agreed a review of the current legislation and the continued development of awareness raising and training measures within relevant justice agencies. The Department had prepared draft terms of reference and commenced work on the review which will be considered by an expert reference group and a Review Board is being set up to oversee and steer the work of the review. The Department aims to consult on the findings of the review over autumn/ winter with a view to completing all preparatory work for any legislative change by the end of the current mandate.
641. At the request of the Committee the Department provided a copy of the draft terms of reference for the Review of the Law on Strangulation and a list of the representatives involved in the reference group. The Department also highlighted that consideration of the so called “rough sex” defence had been added to the review in light of the recent government amendment to the Westminster Domestic Abuse Bill to outlaw the defence in cases of serious injury or death.

642. **The Committee is content to monitor the review and will consider the proposals to address this issue in due course.**

Register of Stalkers and Domestic Abusers

643. The South Eastern DSVP and the SEHSCT recommended in their written evidence to the Committee that a Register of Stalkers and Domestic Abusers is established similar to the Sex Offenders Register stating that a greater emphasis is required on monitoring this cohort of perpetrators so they are held accountable for their actions and the imbalance of expecting victims to protect themselves is addressed.

644. In response to the recommendation the Department advised that there is no sex offender register, rather sex offenders are subject to statutory notification requirements, set out in law, which requires them to notify the police of certain personal information. The statutory framework does not provide for the information to be held on a central database so there is no central list of sex offenders that could be replicated for other purposes.

645. While there are currently no plans to introduce a register for domestic abuse offenders or stalkers in Northern Ireland (there are no such registers in the rest of the UK either) the Department highlighted that the Protection from Stalking Bill, which is planned for introduction to the Assembly this autumn, is however, very much focussed on protecting the victim. The Bill will create a new specific offence of stalking and will offer protection for victims by introducing provision for Stalking Protection Orders (SPO).

646. The SPO will allow early intervention by police to ensure that the victim is protected from the outset. Police will be able to apply to the courts for a SPO, before any conviction of stalking is made, thus taking the onus

away from the victim to protect themselves. The SPO will impose notification requirements on the perpetrator, which means they must advise police of their personal details and any changes to those details. The SPO will also allow restrictions to be imposed on the perpetrator as well as positive or therapeutic interventions such as attending a mental health programme. Breach of SPO requirements, restrictions, or failure to notify will result in an offence being committed. It is proposed that a SPO should have effect for a fixed period of at least two years and can be renewed if necessary on application by the police to the courts, which means that victims will be protected from the perpetrator for as long as a risk to their safety remains.

647. The Department also highlighted that, in addition to sexual offending, notification requirements have been established in statute for violent offending behaviours as well as human trafficking. Again, these statutory provisions require offenders, who are subject to the notification, to routinely advise police of their personal details and any changes to these details as well as any intentions to travel within the UK as well as outside of it.

648. The Department considers that the current arrangements in place, managed by police and in partnership with other risk management partners, manage the risk posed by domestic violence perpetrators. That said, the Department continues to keep this issue under review as well as monitoring developments in neighbouring jurisdictions.

649. The Department also considers that information provided through the Domestic Violence and Abuse Disclosure Scheme, which was introduced in March 2018 and which operates in conjunction with schemes across the rest of the UK, continues to play an important role in managing risk and protecting victims from harm. Working in partnership with a wide

range of statutory and voluntary sector partners, the scheme enables an individual to ask the police whether their partner, or the partner of someone they are concerned about, poses a risk ('right to ask'). Police can also pro-actively advise an individual that their partner poses a risk and good use has been made of this mechanism by police to date.

650. The Committee noted the information provided by the Department on the current position and will return to this issue as part of its on-going work in relation to domestic violence and abuse.

Offence of Upskirting

651. NIHRC, in its evidence, advised that in England and Wales the Voyeurism (Offences) Act 2019, which criminalises upskirting, came into force on 12 April 2019 and similar legislative provision has been made in Scotland through the Sexual Offences (Scotland) Act 2009.

652. Noting that there are no similar provisions that currently provide for the specific offence of upskirting in Northern Ireland the NIHRC recommended the introduction of a specific criminal offence of upskirting in Northern Ireland to provide effective protection of victims or potential victims without further delay, to ensure compliance with the Istanbul Convention.

653. In its written response the Department advised that legislative proposals to make upskirting a specific offence would be included in a Justice (Miscellaneous Provisions) Bill planned for introduction in early 2021.

654. The Committee briefly considered this issue and was content with the approach outlined by the Department.

Clause by Clause Consideration of the Bill

655. Having considered the written and oral evidence received on the Bill, the Committee deliberated on the Clauses of the Bill at its meetings on 10, 17 and 24 September and undertook its formal Clause-by-Clause consideration at its meeting on 1 October 2020 - see Minutes of Proceedings in Appendix 1 and Minutes of Evidence in Appendix 2.

656. The Committee supported Clause 9 with the caveat that the Department of Justice amended the Explanatory and Financial Memorandum, as agreed, to provide greater clarity regarding this Clause. One Member, Ms Rachel Woods MLA, indicated that she was not content that this addressed her concerns regarding this Clause.

657. The Committee supported a number of departmental amendments to bring forward new proposals within the core themes of the Bill, to make a change to Clause 25 requested by the Committee and to make minor, tidy up corrections.

658. The Committee also agreed to bring forward six amendments at Consideration Stage. They relate to interim protection for the victim, informing the school of a child who saw, heard or was present during a domestic abuse incident, training, guidance on data collection, independent oversight and reporting on the operation of the Act.

659. Information on the Committee's deliberations on the individual Clauses in the Bill and additional provisions can be found in the previous section of this report.

Clause 1 - The domestic abuse offence

660. Agreed: the Committee is content with Clause 1 as drafted.

Clause 2 - What amounts to abusive behaviour

661. Agreed: the Committee is content with Clause 2 as drafted.

Clause 3 - Impact of behaviour on victim

662. Agreed: the Committee is content with Clause 3 as drafted.

Clause 4 - Meaning of behaviour etc.

663. Agreed: the Committee is content with Clause 4 as drafted.

Clause 5 - Meaning of personal connection

664. Agreed: the Committee is content with Clause 5 as drafted.

Clause 6 - Establishing connection by notice

665. Agreed: the Committee is content with Clause 6 as drafted.

Clause 7 - How notice is to be served

666. Agreed: the Committee is content with Clause 7 as drafted.

Clause 8 - Aggravation where victim is under 18

667. Agreed: the Committee is content with Clause 8, subject to the Minister of Justice's proposed amendment to tidy up the wording as follows:

Clause 8, page 5, line 24

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

Clause 9 - Aggravation where relevant child is involved

668. Agreed: the Committee is content with Clause 9 as drafted.

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

669. Agreed: the Committee is content with Clause 10, subject to the Minister of Justice's proposed amendment to tidy up the wording as follows:

Clause 10, page 6, line 38

Leave out 'course of behaviour would constitute the domestic abuse offence' and insert 'domestic abuse offence would be constituted by virtue of the course of behaviour'

Clause 11 - Exception where responsibility for children

670. Agreed: the Committee is content with Clause 11 as drafted.

Clause 12 - Defence on grounds of reasonableness

671. Agreed: the Committee is content with Clause 12 as drafted.

Clause 13 - Alternative available for conviction

672. Agreed: the Committee is content with Clause 13, subject to the Minister of Justice's proposed amendment to ensure there is no risk of implying that the provisions in the Criminal Law Act 1967 are ousted by what is contained in this clause as follows:

Clause 13, page 7, line 40, at end insert—

'(3) This section is without prejudice to section 6(2) of the Criminal Law Act (Northern Ireland) 1967 (alternative verdicts on trial on indictment).'

Clause 14 - Penalty for the offence

673. Agreed: the Committee is content with Clause 14 as drafted.

Clause 15 - Aggravation as to domestic abuse

674. Agreed: the Committee is content with Clause 15 as drafted.

Clause 16 - What amounts to the aggravation

675. Agreed: the Committee is content with Clause 16 as drafted.

Clause 17 - Exception regarding the aggravation

676. Agreed: the Committee is content with Clause 17 as drafted.

Clause 18 - Meaning of personal connection

677. Agreed: the Committee is content with Clause 18 as drafted.

Clause 19 - Establishing connection by notice

678. Agreed: the Committee is content with Clause 19 as drafted.

Clause 20 - How notice is to be served

679. Agreed: the Committee is content with Clause 20 as drafted.

New Clause

680. The Minister of Justice proposes to insert a new Clause 20A to amend the child cruelty offence in Section 20 of the Children and Young Persons Act (NI) 1968 to ensure that non-physical ill treatment of a child by someone with parental responsibility for them is criminalised.

'Definitions for child cruelty offence

Meaning of ill-treatment etc. in offence provision

[20A]. In section 20 (cruelty to persons under 16) of the Children and Young Persons Act (Northern Ireland) 1968–

(a) in subsection (1), the words from “(including” to “derangement)” are repealed,

(b) before paragraph (a) of subsection (2) insert–

“(za) a reference to–

(i) ill-treatment is to ill-treatment whether physical or otherwise;

(ii) suffering or injury is to suffering or injury whether physical or otherwise;”.

681. Agreed: the Committee is content with the new Clause 20A.

Clause 21 - No right to claim trial by jury

682. Agreed: the Committee is content with Clause 21 as drafted.

Clause 22 - Special measures directions

683. Agreed: the Committee is content with Clause 22 as drafted.

Clause 23 - Prohibition of cross-examination in person

684. Agreed: the Committee is content with Clause 23 as drafted.

Clause 24 - Meaning of offence involving domestic abuse etc.

685. Agreed: the Committee is content with Clause 24 as drafted.

New Clause 24A

686. The Committee agreed to introduce a new Clause to provide for the Department of Justice to make provision for measures to protect and support the victim or alleged victim similar to Domestic Abuse Protection Notices and Orders.

Interim protection for the victim

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

(2) The regulations may include provisions about—

(a) court orders

(b) measures other than court orders

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

Clause 25 - Guidance about domestic abuse

687. Agreed: the Committee is content with Clause 25 subject to the Minister of Justice's proposed amendment to change the word 'may' to 'must' and the Committee's proposed amendment to make provision by way of regulations for informing the school of a child who saw, heard or was present during a domestic abuse incident as follows:

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

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

Clause 25, page 13, line 34, leave out from 'may' to end of line 35 and insert

'must—

(a) keep any guidance issued under this section under review, and

(b) revise any guidance issued under this section if it considers revision to be necessary in light of review.'

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

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

New Clause

688. The Committee agreed to introduce a new Clause to provide for guidance on data collection.

After Clause 25 insert -

Guidance on data collection

25A (1) The Department of Justice—

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

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

(2) The relevant bodies are—

(a) Police Service of Northern Ireland

(b) Public Prosecution Service Northern Ireland,

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

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

New Clause

689. The Committee agreed to introduce a new Clause to place a duty on the Department of Justice regarding training for the effective operation of this Act.

After Clause 25 insert -

Training

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

(a) Police Service of Northern Ireland,

(b) Public Prosecution Service Northern Ireland, and

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

is made available to allow for the effective operation of this Act.

(2) Training must be provided annually.

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

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

New Clause

690. The Committee agreed to introduce a new Clause to provide for the appointment of an independent person to oversee the implementation of Part 1 of the Act.

After Clause 25 insert -

Independent oversight

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

(a) contribute to the development of the guidance under Section 25,
and

(b) review, report and make recommendations in relation to the operation of Part 1.

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

(3) The Department must—

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

(b) arrange for it to be published.

(4) The Department may by regulations set out the date, not less than 7 years after commencement, when the independent person may cease the duties in Subsections (1) and (2).

(5) Starting on the date when the independent person ceases duties, the Department must publish a report on subsection (1)(b) every 3 years thereafter.

New Clause

691. The Committee agreed to introduce a new Clause to require the Department of Justice to report on the operation of the Act at intervals of 3 years and to publish and lay the report in the NI Assembly.

After Clause 25 insert -

Report on the operation of this Act

25A. (1) The Department of Justice must prepare a report on the operation of -

- (a) an offence under section 1(1), and*
 - (b) an offence that is aggravated as described in sections 8, 9 and 15.*
- (2) The report must set out, in relation to those sorts of offences—*
- (a) the number of cases for which criminal proceedings are undertaken,*
 - (b) the number of convictions in criminal proceedings,*
 - (c) the average length of time—*
 - (i) from service of the complaint or indictment,*
 - (ii) to finding or verdict as to guilt (including plea of guilty),*
 - (f) information about the experience of witnesses (including witnesses who are children) at court,*
 - (g) such additional information as the Department of Justice considers appropriate.*
- (3) The report must, in relation to those sorts of offences, include distinct statistics for each of them.*
- (4) For the purpose of the report, the Department of Justice must seek information on how court business is arranged so as to ensure the efficient disposal of cases involving those sorts of offences.*
- (5) The report must also include –*
- (a) activities and associated timespans for delivering the guidance in Section 25 and any plans for review,*
 - (b) strategies to communicate the provisions of Part 1 to the public and to victims in particular, and*
 - (c) any additional activities which support the operation of the Act.*
- (6) The Department must prepare a report under this section—*
- (a) not more than 2 years after Commencement, and*
 - (b) thereafter, at intervals of not more than 3 years.*
- (7) The Department must—*
- (a) lay the report before the Northern Ireland Assembly, and*
 - (b) arrange for it to be published.*

New Clause

692. The Minister of Justice proposes to insert a new Clause A26 to amend Article 12(A) of the Children (NI) Order 1995 so that a court considering an application for a contact or residency order will be specifically required

to have regard to the conviction of the party applying for the order for the new domestic abuse offence (or another offence) where the child aggravator has been applied as follows:

Before Clause 26 insert–

‘Factors relevant to residence and contact orders

[A26].–(1) In the Children (Northern Ireland) Order 1995, in Article 12A (residence and contact orders and domestic violence)–

(a) in paragraph (1), after “in favour of” insert “–

(a) any person, the court shall have regard to any conviction of the person for a domestic abuse offence involving the child,

(b) ”,

(b) after paragraph (1) insert–

“(1A) For the purposes of paragraph (1)(a), a domestic abuse offence involving the child is–

(a) an offence under section 1 of the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020 if–

(i) the offence is aggravated as provided for in section 9 of that Act, and

(ii) the aggravation of the offence relates to the child, or

(b) an offence of any kind (apart from one under section 1 of that Act) if–

(i) the offence is aggravated as provided for in section 15 of that Act, and

(ii) the child is not the person against whom the offence was committed but the aggravation of the offence relates to the child.”,

(c) in paragraph (2), for “paragraph (1)” substitute “paragraph (1)(b)”,

(d) in paragraph (3), after “Article 3” insert “(and in that paragraph neither sub-paragraph limits the effect of the other sub-paragraph)”.’

693. Agreed: the Committee is content with the new Clause A26.

Clause 26: Prohibition of cross-examination in person

694. Agreed: the Committee is content with Clause 26, subject to the Minister of Justice’s proposed amendment to correct a small error that occurred when the Bill was being processed prior to introduction as follows:

Clause 26, page 16, line 3

Leave out 'provision means a statutory provision or any other' and insert 'corresponding provision means a corresponding statutory provision or any other corresponding provision'

*Clause 26, page 18, line 3
Leave out 'family'*

*Clause 26, page 18, line 6
Leave out 'family'*

*Clause 26, page 17, line 5,
Leave out '(2) and insert '3(2)'*

New Clause

695. The Minister of Justice proposes to insert a new Clause 26A to provide for court rules for special measures directions in family proceedings.

After Clause 26 insert—

'Special measures directions in family proceedings

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

"Special measures directions in family proceedings

11K.— (1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person ("P") where—

- (a) P is a party to or witness in family proceedings,***
- (b) P is, or is at risk of being, subjected to abusive behaviour by a person who is—***
 - (i) a party to the proceedings,***
 - (ii) a relative of a party to the proceedings (other than P), or***
 - (iii) a witness in the proceedings, and***
- (b) P and that person are personally connected.***

(2) Rules under paragraph (1) must provide for the court to consider, on the application of a party or of the court's own motion, whether it is

necessary to make a special measures direction (or more than one direction).

(3) Provision in rules by virtue of paragraph (2) may include provision about what factors the court is to take into account when considering whether a special measures direction should be made, in particular (but not limited to)–

- (a) the availability of the special measures in question, and*
- (b) any views expressed by P.*

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

- (a) section 2 (as read with section 3(2)) of that Act,*
- (b) sections 4 and 5 of that Act.*

(5) In this Article–

“family proceedings” means–

- (a) proceedings which are family proceedings for the purposes of Article 12 (family proceedings rules),*
- (b) proceedings in a court of summary jurisdiction when exercising its jurisdiction under one or more of the following–*
 - (i) the Domestic Proceedings (Northern Ireland) Order 1980,*
 - (ii) Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989,*
 - (iii) the Children (Northern Ireland) Order 1995,*
 - (iv) the Family Homes and Domestic Violence (Northern Ireland) Order 1998,*
 - (v) Schedule 16 to the Civil Partnership Act 2004,*

“relative” has the meaning given by Article 2(2) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998,

“rules of court” includes–

- (a) rules of court under Article 12, and*
- (b) magistrates' courts rules,*

as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954,

“special measures” means such measures specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings,

“special measures direction” means a direction by the court granting special measures.

11L.– (1) The Department of Justice may by regulations amend Article 11K so as to alter the definition of “family proceedings” in paragraph (5) of that Article.

(2) Regulations that contain (with or without other provisions) provision under paragraph (1) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.”.’

696. Agreed: the Committee is content with the new Clause 26A.

New Clause

697. The Minister of Justice is proposing to insert a new Clause 26B to provide for prohibition of cross-examination in person in civil proceedings.

After Clause 26 insert–

‘Prohibition of cross-examination in person in civil proceedings generally [26B]. In the Civil Evidence (Northern Ireland) Order 1997, after Article 7 insert–

“Prohibition of cross-examination in person in civil proceedings

Prohibition of cross-examination in person: introductory

7A. – (1) For the purposes of Articles 7B to 7F–

civil proceedings” means proceedings (other than proceedings which are family proceedings for the purposes of Article 12 of the Family Law (Northern Ireland) Order 1993), in–

(a) the High Court, or

(b) a county court,

exercising its civil jurisdiction,

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

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

Direction for prohibition of cross-examination in person

7B. – (1) In civil proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if it appears to the court that—

- (a) the quality condition or the significant distress condition is met, and*
- (b) it would not be contrary to the interests of justice to give the direction.*

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

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

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

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

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

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

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

- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person,*
- (b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person,*

(c) *the nature of the questions likely to be asked, having regard to the issues in the proceedings,*

(d) *any conviction or caution (of any kind) of which the court is aware for an offence committed by the party in relation to the witness,*

(e) *any conviction or caution (of any kind) of which the court is aware for an offence committed by the witness in relation to the party,*

(f) *any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,*

(g) *any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,*

(h) *any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness,*

(i) *any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party,*

(j) *any relationship (of whatever nature) between the witness and the party.*

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

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

(a) *address the questions put to the witness, and*

(b) *can be understood, both individually and collectively.*

Directions under Article 7B: supplementary

7C.—(1) *A direction under Article 7B has binding effect from the time it is made until the witness in relation to whom it applies is discharged.*

(2) *But the court may revoke a direction under Article 7B before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—*

(a) *on an application made by a party to the proceedings, or*

(b) *of the court's own motion.*

(3) *The court may revoke a direction under Article 7B on an application made by a party to the proceedings only if there has been a material change of circumstances since—*

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

(4) The court must state its reasons for—

- (a) giving a direction under Article 7B,*
- (b) refusing an application for a direction under Article 7B,*
- (c) revoking a direction under Article 7B,*
- (d) refusing an application for the revocation of a direction under Article 7B.*

Alternatives to cross-examination in person

7D.—(1) This Article applies where a party to civil proceedings is prevented from cross-examining a witness in person by virtue of Article 7B.

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

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

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

(a) invite the party to the proceedings to arrange for a qualified legal representative to act for the party for the purpose of cross-examining the witness, and

(b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose.

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

(a) the party has notified the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness, or

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

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

representative appointed by the court to represent the interests of the party.

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

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

(8) For the purposes of this Article—

(a) a reference to cross-examination includes a reference to continuing to conduct cross-examination,

(b) “qualified legal representative” means a legal representative who has a right of audience in relation to the proceedings before the court.

Costs of legal representatives appointed under Article 7D(6)

7E. - (1) The Department of Justice must pay such sums as the Department may determine in respect of—

(a) fees or costs properly incurred by a qualified legal representative appointed under Article 7D (6), and

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

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

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

(b) to be calculated in accordance with—

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

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

Guidance for legal representatives appointed under Article 7D(6)

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

(2) A qualified legal representative appointed under Article 7D(6) must have regard to any guidance issued under this Article.

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

(4) The Department of Justice must publish—

(a) any guidance issued under this Article, and

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

Regulations under Articles 7A to 7E

7G.— (1) Any power of the Department of Justice to make regulations under Articles 7A to 7E includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

(2) Regulations that contain (with or without other provisions) provision under Article 7A (2) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(3) Regulations that contain provision under Articles 7B to 7E are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft before and approved by a resolution of the Assembly).”.’

698. Agreed: the Committee is content with the new Clause 26B.

New Clause

699. The Minister is proposing to insert a new Clause 26C to provide for court rules for special measures directions in civil proceedings.

After Clause 26 insert—

Special measures directions in civil proceedings generally

[26C]. *In the Civil Evidence (Northern Ireland) Order 1997, after Article 7G (as inserted by this Act) insert—*

“Special measures directions in civil proceedings

7H.— (1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person (“P”) where—

(a) P is a party to or witness in civil proceedings, and

(b) P is the victim, or alleged victim, of a specified offence.

(2) Rules under paragraph (1) must provide for the court to consider, on the application of a party or of the court’s own motion—

(a) whether—

(i) *the quality of P's evidence, or*

(ii) *where P is a party to the proceedings, P's participation in the proceedings,*

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

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

(3) *Provision in rules by virtue of paragraph (2)(b) may include provision about what factors the court is to take into account when considering whether a special measures direction should be made, in particular (but not limited to)–*

(a) *the availability of the special measures in question, and*

(b) *any views expressed by P.*

(4) *For the purposes of this Article–*

(a) *P is the victim of a specified offence if another person has been convicted of, or given a caution for, the offence,*

(b) *P is the alleged victim of a specified offence if another person has been charged with the offence.*

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

(6) *In this Article–*

“caution” means–

(a) *in the case of Northern Ireland–*

(i) *a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or*

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

(b) *in the case of England and Wales–*

(i) *a conditional caution given under section 22 of the Criminal Justice Act 2003,*

(ii) *a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or*

(iii) *any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted,*

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

“civil proceedings” means proceedings (other than proceedings which are family proceedings for the purposes of Article 12 of the Family Law (Northern Ireland) Order 1993) in—

(a) *the High Court, or*

(b) *a county court,*

exercising its civil jurisdiction,

“conviction” means—

(a) *wherever occurring in Northern Ireland, Scotland, or England and Wales—*

(i) *a conviction before a court, or*

(ii) *a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged,*

(b) *wherever occurring within or outside the United Kingdom, a conviction in service disciplinary proceedings,*

“rules of court” includes county court rules as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954,

“service disciplinary proceedings” means—

(a) *any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the meaning of that Act),*

(b) *any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence),*

(c) *any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976,*

“special measures” means such measures specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings,

“special measures direction” means a direction by the court granting special measures,

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

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

(a) Article 6 of the Criminal Justice (Northern Ireland) Order 1996 or any corresponding provision,

(b) section 187 of the Armed Forces Act 2006 or any corresponding provision.

(8) For the purposes of this Article—

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

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

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

(2) Regulations that contain (with or without other provisions) provision under paragraph (1) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(3) Regulations that contain provision under Article 7H(6) are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft and approved by a resolution of the Assembly).’

700. Agreed: the Committee is content with the new Clause 26C.

Clause 27 - Commencement

701. Agreed: the Committee is content with Clause 27 as drafted.

Clause 28 - Short title

702. Agreed: the Committee is content with Clause 28 as drafted.

Long Title

703. Agreed: the Committee is content with the Long Title of the Bill.

List of Appendices

Appendix 1 - Minutes of Proceedings

Links to the Minutes of Proceedings:

- [2 April 2020](#)
- [23 April 2020](#)
- [30 April 2020](#)
- [14 May 2020](#)
- [28 May 2020](#)
- [11 June 2020](#)
- [16 June 2020](#)
- [18 June 2020](#)
- [23 June 2020](#)
- [25 June 2020](#)
- [2 July 2020](#)
- [3 September 2020](#)
- [10 September 2020](#)
- [17 September 2020](#)
- [21 September 2020](#)
- [24 September 2020](#)
- [1 October 2020](#)
- [15 October 2020](#)

Appendix 2 - Minutes of Evidence

Date	Evidence session
2 April 2020	<u>Oral evidence session with Department of Justice and PSNI Officials</u>
11 June 2020	<u>Oral evidence session with Women's Aid Federation</u>
11 June 2020	<u>Oral Evidence session with Men's Advisory Project NI</u>
18 June 2020	<u>Oral evidence session with Victim Support NI</u>
18 June 2020	<u>Oral evidence session with NSPCC and Barnardo's NI</u>
18 June 2020	<u>Oral evidence session with the Attorney General for Northern Ireland</u>
25 June 2020	<u>Oral evidence session with Cara Friend/ Here NI and Rainbow Project</u>
25 June 2020	<u>Oral evidence session with Evangelical Alliance</u>
25 June 2020	<u>Oral evidence session with Migrant Centre NI</u>
2 July 2020	<u>Oral evidence session with Bar of NI</u>
2 July 2020	<u>Oral evidence session with the Public Prosecution Service</u>
2 July 2020	<u>Oral evidence session with the Northern Ireland Human Rights Commission</u>
3 September 2020	<u>Oral evidence session with Department of Justice and PSNI Officials</u>
10 September 2020	<u>Informal Deliberations</u>
17 September 2020	<u>Informal Deliberations</u>
17 September 2020	<u>Informal Deliberations on Other Issues not included in the Bill</u>
24 September 2020	<u>Deliberations on the Clauses of the Bill</u>
1 October 2020	<u>Further consideration of Clauses 9, 11 and 17</u>
1 October 2020	<u>Formal Clause by Clause Consideration</u>

Appendix 3 - List of Written Submissions

Links to the Written Submissions received

Number	Organisation
1	NILGA
2	Parenting NI
3	Department of Health – Minister
4	Committee for the Economy
5	CJINI
6	Department of Agriculture, Environment and Rural Affairs
7	Department of Finance
8	PBNi
9	Mid and East Antrim Borough Council
10	Belfast DSVP
11	ONUS
12	Department of Education
13	NEXUS
14	The National Lottery Community Fund
15	Methodist Church
16	Committee for Communities
17	La Dolce Vita
18	Victim Support NI
19	Relate NI
20	Barnardos NI
21	Children’s Law Centre
22	Northern Ireland Policing Board
23	NICCY
24	NSPCC
25	Huntington’s Disease Association
26	CINI
27	South Eastern Health and Social Care Trust
28	NIPSA

Number	Organisation
29	MANi (Mens Alliance NI)
30	NIACRO
31	Women's Advocacy Project
32	NIWEP
33	South Eastern DSVP
34	ICTU
35	COPNI
36	Women's Aid Federation
37	Women's Regional Consortium
38	Rainbow Project
39	Attorney General for Northern Ireland
40	Evangelical Alliance
41	Ulster University
42	Presbyterian Church
43	PSNI
44	NI Social Care Council
45	HERe NI/ Cara-Friend
46	Women's Resource and Development Agency
47	Equality Commission
48	Bar of NI
49	NIHRC
50	Migrant Centre NI
51	PCS (Public and Commercial Services Union)
52	NI Catholic Council on Social Affairs
53	Committee for Health
54	Derry and Strabane PCSP
55	Derry City and Strabane District Council
56	Department of Infrastructure
57	Jim Allister MLA
58	Superintendents Association NI
59	Public Prosecution Service
60	Education Authority
61	Safeguarding Board for Northern Ireland

Number	Organisation
62	Women's Policy Group NI
63	Men's Advisory Project
64	Soroptimists Club
65	Soroptimist International – Belfast Club
66	Action for Children Northern Ireland

Individual Submissions Received

A total of 45 submissions from individuals were received. The submissions have been anonymised and, where they provide details of personal circumstances, only those where permission has been granted by the individual, have been included.

- [Individual Submission 1](#)
- [Individual Submission 2](#)
- [Individual Submission 3](#)
- [Individual Submission 4](#)
- [Individual Submission 5](#)
- [Individual Submission 7](#)
- [Individual Submission 10](#)
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- [Individual Submission 34](#)
- [Individual Submission 35](#)
- [Individual Submission 36](#)
- [Individual Submission 39](#)
- [Individual Submission 43](#)
- [Individual Submission 44](#)

Appendix 4 Memoranda and papers from the Department of Justice

Date	Memoranda and papers from the Department of Justice
12 March 2020	Correspondence from the Department outlining the purpose and contents of the Bill
23 April 2020	Copy of letter from the Minister of Justice to the Minister for Communities
18 May 2020	Correspondence from the Department providing information following the meeting on 2 April and Second Stage Debate
16 June 2020	Correspondence from the Minister of Justice providing information from the Minister for Communities on the Housing Allocation Scheme and Minister for Economy on paid special leave
26 June 2020	Correspondence from the Department providing an update on the Bill
8 July 2020	Correspondence from the Department providing a response to the Committee in relation to Operation Encompass
10 July 2020	Copy of a letter from the Minister of Justice to Paul Scully MP, Minister for Small Business on the Review into Support in the Workplace for Victims of Domestic Abuse
5 August 2020	Correspondence from the Minister of Justice in relation to Clause 10
17 August 2020	Correspondence from the Department providing a response to the issues raised in the evidence received by the Committee on the Bill Provisions
24 August 2020	Correspondence from the Department providing information on the Review of the Law of Strangulation and proposed advocacy services
25 August 2020	Correspondence providing table on other issues raised in the evidence received
9 September 2020	Correspondence providing further information on a number of clauses
16 September 2020	Correspondence providing further information on a number of clauses
23 September 2020	Correspondence responding to issues on a number of clauses
23 September 2020	Correspondence responding to other issues not included in the Bill

Date	Memoranda and papers from the Department of Justice
30 September 2020	<u>Correspondence providing further clarification on Clauses 9,11 and 17</u>
1 October 2020	<u>Correspondence providing clarification on Compensation Payments for Victims of Sexual Abuse in the Home</u>

Appendix 5 - Other Memoranda and papers from others

Date	Memoranda / Paper
19 June 2020	<u>Correspondence from the Attorney General for Northern Ireland providing clarification on issues raised during his oral evidence session</u>
5 July 2020	<u>Correspondence from Women’s Aid Federation NI providing further information in relation to a Domestic Abuse Commissioner</u>
5 August 2020	<u>Correspondence from the NIHRC providing further information following its attendance at Committee</u>
17 August 2020	<u>Response from the Department for Communities to the Committee providing clarification on funding and support for victims of domestic abuse and housing issues</u>
20 August 2020	<u>Correspondence from the PSNI providing a response to the Committee regarding Domestic Abuse Protection Notices and Orders</u>
21 August 2020	<u>Correspondence from the Bar of NI providing a further information to the Committee on a number of issues</u>
23 September 2020	<u>Correspondence from the PSNI providing a response on Information Sharing Protocols in relation to migrant victims of domestic abuse</u>
23 September 2020	<u>Email from the Northern Ireland Policing Board regarding PSNI Information Sharing Protocols in relation to migrant victims of domestic abuse</u>
24 September 2020	<u>Correspondence from the NIPB providing further information in relation to DAPNs and DAPOs</u>
24 September 2020	<u>Correspondence from Women’s Aid Federation NI in relation to parental alienation</u>

Date	Memoranda / Paper
25 September 2020	<u>Correspondence from the NSPCC on proposed amendments to Clauses 11 and 17</u>
28 September 2020	<u>Correspondence from the NIPB providing follow up information regarding PSNI Information Sharing Protocols in relation to migrant victims of domestic abuse</u>
28 September 2020	<u>Letter from the National Society for Prevention of Cruelty to Children (NSPCC)</u>
28 September 2020	<u>Email from the South Eastern Health and Social Care Trust regarding Operation Encompass</u>
30 September 2020	<u>Correspondence from Barnardo's NI providing further information on Clauses 9, 11 and 17 of the Bill</u>
1 October 2020	<u>Correspondence from Children in NI in relation to parental alienation</u>
1 October 2020	<u>Correspondence from the Women's Policy Group in relation to parental alienation</u>

Appendix 6 Notes of informal meetings

- [Notes of Informal Meeting 1](#)
- [Notes of Informal Meeting 2](#)
- [Notes of Informal Meeting 3](#)
- [Notes of Informal Meeting 4](#)
- [Notes of Informal Meeting 5](#)
- [Notes of Informal Meeting 6](#)
- [Notes of Informal Meeting 7](#)
- [Notes of Informal Meeting 8](#)
- [Notes of Informal Meeting 9](#)

Appendix 7 Research Papers

Date	RalSe paper considered
29 June 2019	RalSe paper on the Criminalisation of Coercive Control
16 April 2020	RalSe paper on Domestic Abuse Legislative Provisions
20 April 2020	RalSe paper on the provisions of the Bill
27 August 2020	RalSe paper on Information Sharing between Police Forces and Home Office
27 August 2020	RalSe paper on the Defence on Grounds of Reasonableness
27 August 2020	RalSe paper on Domestic Abuse Commissioners

Appendix 8 List of Witnesses

List of Witnesses who gave evidence to the Committee:

- Dr Veronica Holland, Head of Violence Against the Person Branch, Department of Justice
- Jane Maguire, Head of Family Courts and Tribunals Branch, Department of Justice
- Detective Superintendent Anthony McNally, PSNI
- Sonya McMullan, Regional Federation Services Manager, Women's Aid
- Rhonda Lusty, Co-ordinator, Men's Advisory Project NI
- Geraldine Hanna, Chief Executive Officer, Victim Support NI
- Neil Anderson, Northern Ireland Head of Service, NSPCC
- Michele Janes, Head of Barnardo's NI
- The Attorney General for Northern Ireland, Mr John Larkin QC
- Danielle Roberts, Policy Officer, HERE NI
- Amanda McGurk, LGBTI Support Officer, Cara-Friend
- Gavin Boyd, Policy and Advocacy Manager, Rainbow Project
- Ashling Twomey, Advocacy Officer, Rainbow Project
- David Smyth, Head of NI, Evangelical Alliance
- Kendall Bousquet, Migrant Centre NI
- Sarah Ramsey QC, Chair, Bar of NI
- David Mulholland, Chief Executive, Bar of NI
- Ciaran McQuillan, Assistant Director and Head of Serious Crime Unit, Public Prosecution Service
- Caroline Conway, Principal Public Prosecutor in our Policy Unit, Domestic Violence Policy Lead, Public Prosecution Service
- Les Allamby, Chief Commissioner, NIHRC

- Hannah Russell, Director of Legal, Research and Investigations and Advice to Government, NIHR