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**Consultation on forms of evidence of domestic abuse that should trigger an automatic prohibition on cross-examination in person in family proceedings**

**February 2023**

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**1. Introduction**

1. The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (“the 2021 Act”) makes provision, still to be commenced, to protect a victim[[1]](#footnote-1) of domestic abuse from being cross-examined by the perpetrator in person and vice-versa. An automatic prohibition on cross-examination in person will apply in specified circumstances and this consultation seeks views on what forms of evidence of domestic abuse, in addition to those already provided for in the legislation, should trigger the automatic prohibition.
2. The Department would particularly welcome the views of victims of domestic abuse who have been involved in family proceedings, people who have represented themselves in family proceedings, and professionals, organisations and others who may be asked to provide evidence on behalf of a victim of domestic abuse. However, views are invited from all court users, people working in the family justice system, community and voluntary sector organisations, and anyone else with an interest in this subject.

**2. Background**

*Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021*

1. Section 36 of the 2021 Act inserts new provision in the Family Law (Northern Ireland) Order 1993 (“the 1993 Order”) to prohibit perpetrators of domestic abuse from personally cross-examining their victims in family proceedings, and vice versa (for convenience, the provision is set out in **Annex A**).
2. An automatic prohibition on cross-examination in person applies in specified circumstances as set out below. Where none of the automatic prohibitions apply, the court has a discretionary power to prohibit cross-examination in person where it would affect the quality of the witness’s evidence or cause the party or witness significant distress, and it would not be contrary to the interests of justice.
3. Prohibiting a party from conducting cross-examination in person has the potential to impact that party’s ability to put their case effectively to the court and Articles 6 (right to a fair trial) and 8 (right to family life) of the ECHR must be observed. The legislative provision, therefore, includes a power for a court to appoint a legal representative funded by the Department to conduct the cross-examination on behalf of a party prohibited from doing so in person.
4. An automatic prohibition on cross-examination in person will apply as follows:
* a party has been cautioned for, charged with or convicted of a specified offence, they cannot cross-examined the victim in person (and vice versa if the victim is a party);
* an on-notice protective injunction is in force against a party, they cannot cross-examine in person, a witness who is protected by the injunction (and vice versa where the protected person is a party); or
* specified evidence is adduced that a party has engaged in abusive behaviour against a witness to whom they are personally connected, they cannot cross-examine the witness in person (and vice versa if the victim is a party).
1. The lists of relevant offences, on-notice protective injunctions and other evidence of domestic abuse for this purpose will be specified in regulations made by the Department. This consultation is concerned with the forms of “other evidence” of domestic abuse that should be prescribed.

*Background to the provision in the 2021 Act*

1. Prior to the enactment of the 2021 Act, there was no specific statutory provision enabling family courts in Northern Ireland to prohibit perpetrators of domestic abuse from personally cross-examining the victim. Instead, family courts have relied on their general case management powers, although this would not extend to a power to appoint a legal representative to carry out cross-examination of a vulnerable witness on behalf of an unrepresented party.
2. A fundamental review of family justice in Northern Ireland was commissioned by the then Lord Chief Justice in 2015 and led by Lord Justice Gillen. The final report of the Review was published in 2017 and specifically considered the issue of protection of witnesses from cross-examination by personal litigants.[[2]](#footnote-2) The report recommended that legislative powers, similar to those already available in criminal proceedings (i.e. Part III of the Criminal Evidence (Northern Ireland) Order 1999), should be introduced in family proceedings in Northern Ireland to prevent a situation in which perpetrators of abuse can continue to exercise control over their victims and cause them further distress by cross-examining them in person.

*Consultation on protecting victims of domestic abuse from being cross-examined by perpetrators in person in family proceedings*

1. In July 2019, the Department consulted on options for legislation to protect victims of domestic abuse from being cross-examined in person by the perpetrator in family proceedings.[[3]](#footnote-3)
2. As well as proposing an automatic prohibition of cross-examination in person where there is a relevant conviction, caution, charge or on-notice injunction, the consultation paper asked if there were any other circumstances in which an absolute prohibition on cross-examination in person should apply.
3. Of the 20 responses received, half made a number of suggestions in relation to other circumstances in which an absolute prohibition on cross-examination should apply. These were where:
* the party has committed a specified offence against the children or relatives of the person to be cross-examined;
* the party has been convicted of a relevant offence in respect of another victim;
* there are allegations of domestic abuse, child abuse, sexual violence, coercive control, stalking or harassment;
* there is any indication in whatever form of a history of domestic abuse;
* police have been called out to a domestic abuse incident;
* a police officer attests that there is evidence of domestic abuse;
* a DASH (Domestic Abuse, Stalking and Honour Based Violence) risk checklist has been completed by the police and the abused party has been assessed to be high risk;
* a case has been referred to MARAC [Multi Agency Risk Assessment Conference];
* an application has been submitted to the Northern Ireland Domestic Violence and Abuse Disclosure Scheme;
* domestic abuse has been disclosed to court staff;
* the court proactively asks the party to be cross-examined if the litigant in person has been abusive;
* a statutory agency or a voluntary support organisation attests that domestic abuse has been disclosed to them or they have provided support to a victim of domestic abuse;
* staff in a child contact centre indicate that they have concerns about domestic abuse;
* there is a report of domestic abuse in medical records.
1. Taking the views expressed by consultees into account, the Department gave a commitment in its response to the consultation, which was published in February 2020, to include a power in the legislation for the Department to specify in regulations additional evidence of domestic abuse in respect of which an automatic prohibition on cross-examination in person in family proceedings would apply.[[4]](#footnote-4)

*Commitment to further consultation*

1. When the Committee for Justice was scrutinising the Bill at Committee Stage, those who responded to its call for evidence broadly welcomed the provisions on the prohibition of cross-examination in person in family proceedings. Some, however, were of the view that the Bill should have included provision for an automatic prohibition of cross-examination in person where any allegation of domestic abuse is made. The Committee sought the Department’s view on this.
2. The Department’s response was that the protection of victims needs to be balanced with the need to ensure fairness in the proceedings for all parties, therefore, the forms of evidence of domestic abuse to be specified would need to be sufficiently objective and robust to justify an absolute bar. The Department stated, however, that it would consult on the forms of “other evidence” that should lead to an absolute prohibition before making any regulations under powers in the Bill. This consultation is being carried out further to that commitment.

**3. Evidence of domestic abuse**

1. As noted above, the Department is of the view that, in order to protect the right to a fair hearing of all parties, the forms of evidence to be specified should be sufficiently objective and robust to justify an automatic prohibition of cross-examination in person. Accordingly, it is considered that an automatic prohibition should not apply where a party simply makes a disclosure or allegation of domestic abuse to the court without further evidence to support this. It is also important to emphasise that production of any of the forms of evidence specified in regulations made under the 2021 Act will simply trigger an automatic prohibition on cross-examination in person, i.e. a procedural protection. The court will still have to determine the substantive issues in dispute between the parties (including any contested allegations of abuse) having regard to all of the evidence before the court.
2. In considering what forms of evidence might be specified in regulations, the Department has considered existing guidance and legislation which specifies items of evidence that can be provided as evidence of domestic abuse for a particular purpose.

*Domestic abuse waiver in legal aid applications*

1. In determining whether to apply the discretionary waiver of the financial eligibility test for access to civil legal services for victims of domestic abuse (‘the domestic abuse waiver’), the Director of Legal Aid Casework has to be satisfied that the applicant for legal aid is, or appears to be, a victim of domestic abuse perpetrated by a party bringing proceedings under Article 8 (application for contact, residence etc.) of the Children (NI) Order 1995. Many of the items of evidence that may be considered for this purpose are already included in the provision to be inserted in the 1993 Order (as amended by the 2021 Act), i.e. a relevant conviction, caution, or on-notice injunction.[[5]](#footnote-5) However the legal aid guidance also refers to “evidence provided by the PSNI that the respondent in the children proceedings has been a reported victim of domestic abuse by the applicant in the proceedings” and “other evidence providing an equal level of assurance that the applicant is eligible for the waiver”.

*Position in England and Wales*

1. The Domestic Abuse Act 2021 makes provision in relation to the prohibition of cross-examination in person in family proceedings in England and Wales, corresponding to the provision for this jurisdiction in the [Northern Ireland] 2021 Act. Last year, the Ministry of Justice made regulations to specify the forms of evidence of domestic abuse which will trigger the automatic prohibition of cross-examination in person in the Family Court in England and Wales (see Schedule 3 to the Prohibition of Cross-Examination in Person (Civil and Family Proceedings) Regulations 2022).[[6]](#footnote-6) With the exception of references to convictions, cautions, charges or on-notice injunctions (which, as in Northern Ireland, are already provided for in the primary legislation), the regulations mirror the forms of evidence of domestic abuse that can be provided for the purpose of applying for civil legal services in private family law cases in England and Wales (see Schedule 1 to the Civil Legal Aid (Procedure) Regulations 2012, as amended). It is worth noting that specified evidence of domestic abuse that has occurred in Northern Ireland is included.
2. Statistics produced by the Legal Aid Agency (E&W) for 2020/21 show that, out of approximately 16,335 pieces of evidence supplied in support of applications, the most common were: letter from a domestic abuse support organisation (37%); protective injunction (28%); letter from a health professional (10%); and evidence from an Independent Domestic Violence Advisor (8%).[[7]](#footnote-7)

*Evidence of domestic abuse that should trigger a prohibition of cross-examination in person in Northern Ireland*

1. Taking into consideration the responses to the Department’s 2019 consultation, the evidential requirements to support applications for the domestic abuse waiver in Northern Ireland and the forms of evidence that have been specified as triggering an automatic prohibition on cross-examination in person in family proceedings in England and Wales, the Department would welcome the views of consultees on the forms of evidence set out in the table in section 5 being specified in regulations as evidence that would trigger an automatic prohibition of cross-examination in person in family proceedings in this jurisdiction.
2. It should be noted that new Article 11D to be inserted in the 1993 Order provides that the evidence submitted must be in respect of abusive behaviour towards a party/witness in the proceedings by another person, who is also involved in the family proceedings as a party or witness and that they must be ‘personally connected’ (as defined, respectively, by sections 2 and 5 of the 2021 Act - see **Annex B**). Therefore, the regulations cannot include evidence of a party/witness having committed domestic abuse against a person who is not involved in the proceedings or between persons who are not personally connected. Examples of this would be:
* evidence that a party has committed a domestic abuse-related offence against the children or relatives of the person to be cross-examined;
* evidence that a party has been convicted of a domestic abuse-related offence in respect of another victim ; and
* information about a party’s history of domestic abuse towards a previous partner shared by the police under the Domestic Violence and Abuse Disclosure Scheme.
1. In relation to specifying evidence of domestic abuse that would require to be provided by professionals, individuals working for support organisations and others, we have considered the potential effect of section 5 (Penalties for concealing offences, etc.) of the Criminal Law Act (Northern Ireland) 1967. This provision places a duty on persons to report a serious offence to the police. However, an offence will not occur if there is a “reasonable excuse” not to report an offence to the police and any associated proceedings may only be instigated by or with the consent of the Attorney General for Northern Ireland.
2. The Attorney General has issued guidance to the PSNI and PPS on the application of s5 to victims of serious sexual offences and those to whom they make disclosures.[[8]](#footnote-8) In regard to what constitutes a reasonable excuse not to report a crime, the guidance states that it is important to note that, in the vast majority of cases, a failure to report what has happened to police will not amount to an offence, as a victim, or someone in whom they have confided, will be considered to have a reasonable excuse for not disclosing the information to the PSNI. For example, health professionals will normally be able to rely on their professional duty of confidentiality owed to patients and clients as a reason for not reporting an offence. Others, for example those working for support organisations, may be able to rely on the position of trust they have with the victim or the victim not wishing the incident to be reported to the police. In regard to the question of whether it is likely to be considered in the public interest to prosecute for the failure to report a crime, the guidance states that it is highly unlikely that this would be the case unless the person to whom the disclosure was made had a specific professional duty to do so or the failure to do so put others at serious risk of harm.
3. Having regard to this guidance and assuming a similar approach would be taken in relation to other types of serious offences, on the face of it, it seems unlikely that a criminal prosecution would be taken forward following the provision of evidence to a family court by a third party for the purpose of triggering an automatic prohibition on cross-examination under statutory provision. However, the Department would welcome consultees’ views on the implications, if any, of s5 the 1967 Act.
4. Finally, it is also important to emphasise that, in any case where the absolute prohibition is not triggered, an application could still be made to the court to exercise its discretionary power (under new Article 11E of the 1993 Order) to prohibit cross-examination in person.

**4. Impact assessments**

1. Options on evidence of domestic abuse to prohibit cross-examination in person in family proceedings have been screened for various impacts. The screening documents are available on the Department’s website.
2. In relation to equality of opportunity, the proposed regulations would apply equally to all victims and perpetrators of domestic abuse, irrespective of whether they belong to a section 75 category. Statistical information, however, indicates that women are more likely than men to be victims of domestic abuse. It is, therefore, anticipated that the provision to protect victims of domestic abuse from being cross-examined by the perpetrator (and vice versa) would benefit a higher proportion of women than men. Whilst children affected by domestic violence would also be expected to benefit, as it is rare for children to give evidence as a witness of fact in family proceedings, the benefit for them is likely to be achieved indirectly through better outcomes as a result of adult witnesses being supported to give their best quality of evidence.
3. Conversely, men are more likely than women to be perpetrators of domestic abuse so a higher proportion of men than women are likely to be prevented from carrying out cross-examination in person under the regulations. This is mitigated by the court being able to appoint a legal representative to carry out the cross-examination instead and, accordingly, it is anticipated that any impact would be minimal and is unlikely to be negative.
4. Overall, we do not anticipate any adverse impact on any section 75 category and do not consider that an equality impact assessment is required.
5. The options on evidence of domestic abuse have also been screened in relation to the need to carry out a child rights impact assessment. Based on the findings of the screening, it was concluded that a full impact assessment is not required.

**5. Consultation questions**

**Question 1.**

**Please consider each type of evidence listed below and indicate if you think that it should be specified in regulations as evidence that will trigger an automatic prohibition on cross-examination in person in family proceedings. Note that P and V referred to below must be a party or witness in the same family proceedings and there must be a personal connection between them.**

**Please explain the reason for your answer.**

|  |  |
| --- | --- |
| **Form of evidence** | **Response** |
| **1(a) Binding over order**Evidence of a court order binding over P in connection with a specified offence against V. | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |
| **1(b) Undertaking**An undertaking given in Northern Ireland or Scotland in place of a protective injunction or given in England and Wales under sections 46 or 63E of the Family Law Act 1996 by P for the protection of V (provided that no cross-undertaking relating to domestic abuse was given). | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |
| **1(c) Fact-finding hearing**A copy of a finding of fact, made in previous legal proceedings, including in a tribunal in the United Kingdom that there has been domestic abuse between P and V. | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |
| **1(d) Expert report for court/tribunal**An expert report produced as evidence in previous proceedings in the United Kingdom for the benefit of a court or tribunal, confirming that V was assessed as having suffered domestic abuse by P. | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |
| **1(e) Letter or report from an appropriate health professional**A letter or report from an appropriate health professional (e.g. doctor, nurse, dentist, psychologist, social worker) confirming that:a) the professional or another appropriate health professional has examined V following a report of abusive behaviour by P; andb) in the reasonable professional judgement of the author, or the examining appropriate health professional, V has, or has had, injuries or a condition consistent with being a victim of domestic abuse. | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |
| **1(f) Appropriate health professional referral to a domestic abuse support service**A letter or report from: a) the appropriate health professional who made the referral; b) an appropriate health professional who has access to the medical records of V; or c) the person to whom the referral was made, confirming there was a referral by an appropriate health professional of V following a report of domestic abuse by P to a person who provides specialist support or assistance for victims of, or those at risk of, domestic abuse. | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |
| **1(g) Multi agency risk assessment conference (MARAC) or other suitable local safeguarding forum**A letter from any person who is a member of a multi-agency risk assessment conference (or other suitable local safeguarding forum) confirming that V has experienced domestic abuse by P.Note that: a local safeguarding forum would consist of more than one organisation/agency. Examples of bodies that might be part of other suitable local safeguarding forums are: police, probation service, prison service, health, housing, education, social services, domestic abuse adviser/advocate, victim support services, women and male support services, etc. | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |
| **1(h) Letter from an independent advocacy service providing support to victims of domestic abuse**A letter from an independent advocacy service in Northern Ireland providing support to victims of abuse or an independent domestic or sexual violence advocate in England and Wales, confirming that they are providing, or have provided, support to V following a report of domestic abuse by P. | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:**  |
| **1(i) Letter from the Housing Executive**A letter from an officer employed by the Northern Ireland Housing Executive or its equivalent in England and Wales or Scotland containing: a) a statement to the effect that, in their reasonable professional judgement, V is a victim of domestic abuse by P; b) a description of the matters relied upon to support that judgement; and c) a description of the support they provided to V. | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |
| **1(j) Letter from organisation providing domestic abuse support services**A letter from an organisation providing domestic abuse support services confirming that: a) in the reasonable professional judgement of the author of the letter, V is a victim of domestic abuse by P; b) a description of the matters relied upon to support that judgement; c) a description of the support provided to V; and d) a statement of the reasons why V needed that support.  | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |
| **1(k) Domestic abuse support organisation refusal of admission to a refuge**A letter or report from an organisation providing domestic abuse support services in the United Kingdom confirming: a) that V was refused admission to a refuge; b) the date on which V was refused admission to the refuge; and c) that V sought admission to the refuge because of allegations of abuse by a party/witness to the proceedings.Note that: a refuge will be either a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic abuse or a residential home established and maintained by a public body for any other purpose that also provides accommodation to the victims of, or those at risk of, domestic abuse. A reason for refusal could be on the grounds that the refuge was full. | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |
| **1(l) Letter from a public authority**A letter from a public authority confirming that V was assessed as being a victim of domestic abuse by P (or a copy of that assessment).Note that: “public authority” would have the same meaning as in section 6 of the Human Rights Act 1998. | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |
| **1(m) Economic abuse**Evidence which the court is satisfied demonstrates that V has been the victim of domestic abuse by P in the form of abuse which relates to economic matters.Note that: relevant types of evidence might include copies of bank statements, cancelled cheques and/or relevant letters from banks, credit card accounts, emails, text messages, etc. | **Yes** [ ]  **/ No** [ ]  **/ Don’t know** [ ] **Reason:** |

**Question 2.**

**Is there other evidence of domestic abuse that ought to be specified in the regulations (bearing in mind that the victim and perpetrator must both be parties to the proceedings and personally connected, and the evidence needs to be sufficiently objective and robust to justify an automatic prohibition)?**

**Please tell us what this evidence is and why you think it should be included.**

|  |
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| **Yes ☐ / No ☐ / Don’t know ☐****If “yes” -****Type of evidence:****Reason for inclusion:** |

**Question 3.**

**Do you think that section 5 (Penalties for concealing offences, etc.) of the Criminal Law Act (Northern Ireland) 1967 has any implications for the forms of evidence that should be specified in the regulations (see paragraphs 3.8 - 3.10)?**

**If you think it does, please tell us why.**

|  |
| --- |
| **Yes ☐ / No ☐ / Don’t know ☐****If “yes”, reason:** |

**Question 4.**

**Do you agree with the outcome of the screening exercises?**

**If you disagree, please tell us why.**

|  |
| --- |
| **Yes ☐ / No ☐ / Don’t know ☐****If “no”, reason:** |

**6. Next steps**

1. You can respond to this consultation by emailing the consultation questionnaire, which is provided separately on the Department’s website (see <https://www.justice-ni.gov.uk/consultations/consultation-evidence-domestic-abuse-family-courts>) to AToJ.Consultation@justice-ni.gov.uk. Alternatively, you can respond online via Citizen Space on the nidirect website at <https://consultations.nidirect.gov.uk/doj/evidence-domestic-abuse>-family-courts.
2. The consultation will be open for nine weeks. The closing date for receipt of responses is **5pm on Friday 21 April 2023**. Please note that it is unlikely that responses to the consultation will be accepted after this date.
3. Hard copies of this consultation document and copies in other formats, such as Braille, large print, etc., can be made available on request. If it would help you to have to this document in a different format or in a language other than English, please let us know and we will do our best to assist you. If you require any further information on this consultation, please contact us by email at: AtoJ.Consultation@justice-ni.gov.uk.
4. We will consider all contributions within the scope of this consultation and take them into account when drafting regulations in due course.

*Privacy notice*

1. We intend to publish a summary of responses on our website on completion of the consultation process. Any contact details, which will identify a respondent as a private individual, will be removed prior to publication. All information will be handled in accordance with the Data Protection Act 2018. Respondents should also be aware that the Department’s obligations under the Freedom of Information Act 2000 may require that any responses, not subject to specific exemptions under that Act, be disclosed to other parties on request.

*Complaints*

1. If you have any concerns about the way that this consultation process has been handled, please contact us by email at: Governance.Unit@justice-ni.gov.uk.

**Annex A**

**Article 11D of the Family Law (Northern Ireland) Order 1993, as amended by the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021**

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

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

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

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

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

(5) The following apply for the purposes of this Article as they apply for the purposes of Chapter 1 of Part 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (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.

**Annex B**

**Sections 2 and 5 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021**

**What amounts to abusive behaviour**

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

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

(a) behaviour directed at B that is violent,

(b) behaviour directed at B that is threatening,

(c) behaviour directed at B, at a child of B or at someone else that—

(i) has as its purpose (or among its purposes) one or more of the relevant effects, or

(ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects.

(3) The relevant effects are of—

(a) making B dependent on, or subordinate to, A,

(b) isolating B from friends, family members or other sources of social interaction or support,

(c) controlling, regulating or monitoring B’s day-to-day activities,

(d) depriving B of, or restricting B’s, freedom of action,

(e) making B feel frightened, humiliated, degraded, punished or intimidated.

(4) In subsection (2)—

(a) the reference in paragraph (a) to violent behaviour includes both sexual violence and physical violence,

(b) in paragraph (c), “child” means a person under 18 years of age.

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

**Meaning of personal connection**

This section has no associated Explanatory Notes

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

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

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

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

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

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

(e) they are members of the same family.

(3) They are members of the same family—

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

(b) if—

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

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

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

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

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

(5) In determining family membership—

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

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

1. For the purposes of this paper, references to “victim” encompasses both victims and alleged victims and references to “perpetrator” encompasses both perpetrators and alleged perpetrators. [↑](#footnote-ref-1)
2. Review of Civil and Family Justice in Northern Ireland Review Group (2017) *Review Group’s Report on Family Justice*. Available atwww.judiciaryni.uk/publications/review-groups-report-family-justice. [↑](#footnote-ref-2)
3. Department of Justice (2019), *Protecting Victims of Domestic Abuse from Being Cross-examined by Perpetrators in Person in Family Proceedings: A Consultation on Options for Legislation*. Available athttps://www.justice-ni.gov.uk/consultations/consultation-prohibition-cross-examination-family-proceedings. [↑](#footnote-ref-3)
4. Department of Justice (2020), *Protecting Victims of Domestic Abuse from Being Cross-examined by Perpetrators in Person in Family Proceedings – A Consultation on Options for Legislation: Summary of Consultation Responses and Next Steps*. Available at https://www.justice-ni.gov.uk/consultations/consultation-prohibition-cross-examination-family-proceedings. [↑](#footnote-ref-4)
5. Department of Justice (2022), *Guidance on the Domestic Abuse Waiver in Legal Aid Applications.* Available athttps://www.justice-ni.gov.uk/publications/guidance-domestic-abuse-waiver-legal-aid-applications. [↑](#footnote-ref-5)
6. www.legislation.gov.uk/uksi/2022/568/contents/made [↑](#footnote-ref-6)
7. *Legal aid statistics: July to September 2022*. Available atwww.gov.uk/government/statistics/legal-aid-statistics-july-to-september-2022. [↑](#footnote-ref-7)
8. The Attorney General’s Human Rights Guidance (The Application of Section 5 of the Criminal Law Act (Northern Ireland) 1967 to Victims of Serious Sexual Offences and those to whom they make Disclosures) Order (Northern Ireland) 2020 - Explanatory Memorandum.

Available at: www.legislation.gov.uk/nisr/2020/113/memorandum/contents [↑](#footnote-ref-8)