

## **Prisons and Courts Bill**

### **Prohibition of cross-examination in person in specified circumstances in family proceedings**

#### **Introduction**

1. The Ministry of Justice is determined to improve support and protections for vulnerable witnesses in the family justice system. The department is investing in the court estate to improve protections for the vulnerable in court buildings and in the courtroom itself, developing better training on domestic abuse for operational staff throughout the family justice system, and working closely with senior judges to improve the availability of special measures in family courts.
2. There is one particular omission in family law that the Ministry of Justice wishes to address through provisions in the Prisons and Courts Bill. Unlike the criminal courts, family courts do not have a specific power to prevent perpetrators of abuse (alleged or otherwise) from cross-examining their victims in person. Such cross-examination can cause victims significant distress and can amount to a continuation of the abuse. The distress caused to victims in such circumstances may also compromise the quality of the evidence they are able to give and leave them feeling that they and their children have been denied access to justice.

#### **What is the current position?**

3. Family courts currently have a range of powers to make sure difficult courtroom situations are handled sensitively for vulnerable witnesses. There is not, however, a specific prohibition on cross-examination in person, nor is there a power to order that a legal representative be appointed (and funded) to put questions on behalf of a person prohibited from cross-examining a witness. Primary legislation is required to change this situation.

#### **What are the proposed changes?**

4. The proposed provisions will allow courts to put an end to the face-to-face cross-examination of vulnerable witnesses in the family courts, so that people who need to be heard are not afraid of speaking out.
5. For example, a party to family proceedings who has been convicted of committing an assault against the witness will not be allowed to put questions to that witness directly. The court must consider if there is a satisfactory alternative way of obtaining the evidence. If the court concludes that there is not, then it may appoint a publicly-funded legal representative to undertake the cross-examination.
6. The provisions will have the practical effect of:
  - a. introducing a blanket ban on cross-examination in person in certain specified circumstances – for example, where the would-be questioner has been convicted of committing a violent or sexual offence against the witness;
  - b. giving the court a discretion to prohibit such cross-examination in other specified circumstances – for example, where the court is satisfied that such cross-examination would cause significant distress to the witness;
  - c. requiring the court to consider alternatives to cross-examination where a prohibition on cross-examination in person applies;

- d. giving the court a power in specified circumstances to appoint a funded legal representative to ask questions on behalf of a party who is prohibited from cross-examining in person; and
- e. making provision for the public funding of such legal representatives.

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