



Victoria Atkins MP

Parliamentary Under-Secretary
of State for the Home Office

Jess Phillips MP
House of Commons
London
SW1A 0PW

Alex Chalk MP

Parliamentary Under-Secretary
of State for Justice

29 June 2020

Dear Jess,

DOMESTIC ABUSE BILL: GOVERNMENT AMENDMENTS FOR REPORT

We are writing to let you have details of a first tranche of the Government amendments (copy attached) we have tabled for Commons Report stage.

Impact of domestic abuse on children (new clause “*Children as victims of domestic abuse*” and amendment to clause 68)

In Committee, I (Victoria Atkins) indicated that I would reflect on your amendment 50 which sought to recognise children within the statutory duty of domestic abuse in Part 1 of the Bill (Official Report, 9 June 2020, col. 101). We fully acknowledge that children growing up in a household where one adult is being abusive towards another are as much victims of domestic abuse as the person being directly abused and that this can have lasting damage on a child’s life chances. The Bill already recognises this in a number of its provisions, including in the general functions of the Domestic Abuse Commissioner and the duty of the Home Secretary to issue statutory guidance. But, we are persuaded that this should also be explicitly recognised in the statutory definition of domestic abuse in Part 1. New clause *Children as victims of domestic abuse* accordingly provides that a child who sees or hears, or experiences the effects of, domestic abuse and is related to the person being abused or the perpetrator is also to be regarded as a victim of domestic abuse for the purposes of the Bill.

Prohibiting cross-examination in person in civil proceedings (new clause “*Prohibition of cross-examination in person in civil proceedings*” and amendments to clause 60 and the long title)

Clause 60 of the Bill prohibits domestic abuse perpetrators cross examining their victims in person in family proceedings in England and Wales (and vice versa). Such cross-examination in person can serve to re-traumatise victims and prevent them giving their best evidence in court.

In April 2018, the Independent Inquiry in Child Sex Abuse published its interim report and recommendations which, amongst other things, recommended that victims and

survivors of child sex abuse, where they are claiming compensation, should be afforded the same protections as in criminal proceedings. Following the publication of that report, the Government commissioned the Civil Justice Council (CJC) - which is an advisory body chaired by the Master of the Rolls and is responsible for overseeing and co-ordinating the modernisation of the civil justice system - to consider the issues raised by this recommendation and to compile a report, the scope of which was not limited to victims and survivors of child sex abuse but rather considered all vulnerable witnesses and parties within civil proceedings.

In February, the CJC published its report on Vulnerable Witnesses and Parties within Civil Proceedings¹. In its report, the CJC made the following recommendations;

“347. If a prohibition in relation to cross-examination of a witness by a self-represented party who has been charged, cautioned or convicted of a specified offence against that witness (and vice versa) is to be enacted then a like provision should be extended to the civil jurisdiction, but with the difference that a discretion to order otherwise should be added (given the breadth of the civil jurisdiction and range of potential circumstances).

348. There should also be a provision that if a prohibition upon cross-examination is in place, the court must consider whether it is necessary, having regard to the overriding objective (as amended) for the witness to be cross-examined by a qualified legal representative appointed by the court.

349. Provision must be made for the appointment of a legal representative with funding through central funds (unless a Judge otherwise orders) and the rates of remuneration must be at such a level that the Court will be able to appoint representatives without undue difficulty or delay.”

New clause *Prohibition of cross-examination in person in civil proceedings* gives effect to these recommendations. As recommended by the CJC, the new clause provides a power for the court to give a direction prohibiting cross-examination in person where the conditions in new section 85F(1)(a) and (b) of the Courts Act 2003 are met. In effect, the court may give a direction in one of two circumstances, namely where cross-examination in person by a party (that is, the perpetrator) is likely to diminish the quality of the witness's (that, is the victim's) evidence, or would cause significant distress to the witness, and it would not be contrary to the interests of justice to give the direction.

Mirroring the provisions in family proceedings, a civil court would have the power in specified circumstances to appoint a legal representative to conduct cross-examination on behalf of a party who is prohibited from cross-examining the witness in person. The court-appointed legal representative will be paid from central funds and guidance will be issued about the scope and nature of their role in the proceedings.

Automatic eligibility for special measures in civil and family proceeding (new clauses “*Special measures in family proceedings: victims of domestic abuse*”

¹ <https://publications.parliament.uk/pa/cm5801/cmpublic/DomesticAbuse/memo/DAB39.pdf>

and “*Special measures in civil proceedings: victims of specified offences*” and amendments to clause 71 and the long title)

In Committee, I (Alex Chalk) undertook to consider amendment 54 and new clause 45 about access to special measures in civil and family proceedings (Official Report, 11 June 2020, column 266). As you know, the Bill creates a statutory presumption that victims of domestic abuse are eligible for special measures in the criminal courts (for example, to enable them to give evidence via a video link or behind a screen). Whether any special measures are ultimately provided in a particular case will still depend on whether the court considers they would be likely to improve the quality of the witness’s evidence (taking into account the witness’s wishes and the ability of parties to effectively test the evidence). The Joint Committee on the Draft Domestic Abuse Bill recommended that automatic eligibility for special measures be extended to the family and civil courts in England and Wales. In our response to the Joint Committee we indicated that we would consider their recommendation further once the CJC had completed the review referred to above and we had the findings of the Ministry of Justice-led expert panel appointed to consider how the family courts respond to allegations of domestic abuse and other harms in private family law proceedings. The Expert Panel has now similarly recommended that a presumption of eligibility for special measures for victims of domestic abuse in the family courts should be enshrined in primary legislation. The CJC did not go this far and instead envisaged making further provision addressing eligibility for special measures in Civil Procedure Rules.

We recognise the strong case for enshrining in primary legislation the presumption that victims of domestic abuse are eligible for special measures in the criminal, family and civil courts. These new clauses therefore augment the provisions in clause 59 of the Bill in relation to the criminal courts by building on the existing provision made in respect of special measures in family court procedure rules. They provide that such rules must provide that where a party or witness in the proceedings is, or is at risk of being, a victim of domestic abuse carried out by another party or witness in the proceedings, or a relative of a party to the proceedings, it is assumed that the quality of their evidence and their participation in the proceedings will be diminished by reason of their vulnerability. As a result of this provision, the family court will no longer be required to make an assessment of the victim’s vulnerability and will move straight to a determination of whether it is necessary to make a “participation direction”.

In relation to civil proceedings, new clause “*Special measures in civil proceedings: victims of specified offences*” provides that Rules of Court must enable the court to make a special measures direction in relation to a witness or party in civil proceedings who is a victim of a specified offence. A special measures direction will only be made if the court is satisfied that the quality of the witness’s evidence, or the witness’s participation in the proceedings, is likely to be diminished by reason of the witness’s vulnerability.

We also wanted to let you know that the Civil Procedure Rule (CPR) Committee is already seized of the CJC report and its recommendations and as such has set up a sub-committee to examine the CJC’s report and to address the recommendations that fall to it. As a first stage, the CPR sub-committee is examining changes to Rules

and the creation of a new practice direction directly addressing vulnerability was discussed at length at its May public meeting. We wanted to provide this clarification, since Liz Saville Roberts had raised this particular point at Committee stage on 11 June. My officials are working closely with the CPR Committee and its sub group.

The Government's approach to new clauses "*Prohibition of cross-examination in person in civil proceedings*" and "*Special measures in civil proceedings: victims of specified offences*" has been shaped by the recommendations of the report published by the independent CJC, which was also informed by a public consultation and took into account a wide range of evidence when considering the experience of vulnerable witnesses in the civil courts. While we want to ensure there is parity between each of the jurisdictions, we also accept that some divergence in approach is unavoidable because the civil and family jurisdictions are very different with regards the types of cases; with the civil jurisdiction having a much wider range before it. We have therefore tailored our approach accordingly to allow for those differences, which is reflected in the drafting.

All of these amendments will extend and apply to England and Wales only.

We are copying this letter to members of the Public Bill Committee, Theresa May, Harriet Harman (Chair, Joint Committee on Human Rights), Yvette Cooper (Chair, Home Affairs Committee), Sir Robert Neill (Chair, Justice Committee), Caroline Nokes (Chair, Women and Equalities Committee) and Maria Miller. We are also placing a copy of this letter and attachment in the library of both Houses.



Victoria Atkins MP



Alex Chalk MP