



House of Commons  
Monday 29th June 2020  
**CONSIDERATION OF BILL**

---

**DOMESTIC ABUSE BILL**

---

Secretary Priti Patel  
Secretary Robert Buckland

1

To move the following Clause—

**“Children as victims of domestic abuse**

- (1) This section applies where behaviour of a person (“A”) towards another person (“B”) is domestic abuse.
- (2) Any reference in this Act to a victim of domestic abuse includes a reference to a child who—
  - (a) sees or hears, or experiences the effects of, the abuse, and
  - (b) is related to A or B.
- (3) A child is related to a person for the purposes of subsection (2) if—
  - (a) the person is a parent of, or has parental responsibility for, the child, or
  - (b) the child and the person are relatives.
- (4) In this section—

“child” means a person under the age of 18 years;

“parental responsibility” has the same meaning as in the Children Act 1989 (see section 3 of that Act);

“relative” has the meaning given by section 63(1) of the Family Law Act 1996.”

***Member’s explanatory statement***

*This new clause provides that references in the Bill to a victim of domestic abuse include children who see or hear, or experience the effects of, the abuse.*

Secretary Priti Patel  
Secretary Robert Buckland

2

To move the following Clause—

**“Special measures in family proceedings: victims of domestic abuse**

- (1) This section applies where rules of court provide that the court may make a special measures direction in relation to a person (“P”) who is a party or witness in family proceedings.

**Domestic Abuse Bill, *continued***

- (2) Rules of court must provide that where P is, or is at risk of being, a victim of domestic abuse carried out by a person listed in subsection (3), it is to be assumed that the following matters are likely to be diminished by reason of vulnerability—
  - (a) the quality of P’s evidence;
  - (b) where P is a party to the proceedings, P’s participation in the proceedings.
- (3) The persons referred to in subsection (2) are—
  - (a) a party to the proceedings;
  - (b) a relative of a party to the proceedings (other than P);
  - (c) a witness in the proceedings.
- (4) Rules of court may provide for an exception to the provision made by virtue of subsection (2) where P does not wish to be deemed to be eligible for the making of a special measures direction by virtue of that subsection.
- (5) In this section—
  - “family proceedings” has the meaning given by section 75(3) of the Courts Act 2003;
  - “relative” has the meaning given by section 63(1) of the Family Law Act 1996;
  - “special measures” means such measures as may be 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.”

***Member’s explanatory statement***

*This new clause would ensure that victims of domestic abuse are automatically eligible for access to special measures in family proceedings without the need for any determination of the victim’s vulnerability.*

Secretary Priti Patel  
Secretary Robert Buckland

3

To move the following Clause—

**“Special measures in civil proceedings: victims of specified offences**

- (1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person who is a party or witness in civil proceedings where that person is the victim, or alleged victim, of a specified offence.
- (2) Rules made by virtue of subsection (1) must, in particular, provide for the court to consider—
  - (a) whether—
    - (i) the quality of the person’s evidence, or
    - (ii) where the person is a party to the proceedings, the person’s participation in the proceedings,is likely to be diminished by reason of vulnerability, and
  - (b) if so, whether it is necessary to make one or more special measures directions.
- (3) For the purposes of this section—

**Domestic Abuse Bill, *continued***

- (a) a person is the victim of a specified offence if another person has been convicted of, or given a caution for, the offence;
  - (b) a person is the alleged victim of a specified offence if another person has been charged with the offence.
- (4) In this section—
- “civil proceedings” means—
    - (a) proceedings in the county court,
    - (b) proceedings in the High Court, other than—
      - (i) proceedings in the Family Division of the High Court which are business assigned, by or under section 61 of (and Schedule 1 to) the Senior Courts Act 1981, to that Division of the High Court and no other, and
      - (ii) proceedings in the exercise of its jurisdiction under the Extradition Act 2003, and
    - (c) proceedings in the civil division of the Court of Appeal;
  - “special measures” means such measures as may be 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 Lord Chancellor.”

***Member’s explanatory statement***

*This new clause would ensure that victims of certain offences have access to special measures in civil proceedings where their vulnerability is likely to diminish the quality of their evidence, or otherwise affect their ability to participate in the proceedings.*

Secretary Priti Patel  
Secretary Robert Buckland

4

To move the following Clause—

**“Prohibition of cross-examination in person in civil proceedings**

In the Courts Act 2003, after Part 7 insert—

“PART 7A

CIVIL PROCEEDINGS: PROHIBITION OF CROSS-EXAMINATION IN PERSON

**85E Prohibition of cross-examination in person: introductory**

In this Part—

“civil proceedings” means—

- (a) proceedings in the county court,
- (b) proceedings in the High Court, other than—
  - (i) proceedings in the Family Division of the High Court which are business assigned, by or under section 61 of (and Schedule 1 to) the Senior Courts Act 1981, to that Division of the High Court and no other, and

**Domestic Abuse Bill, *continued***

- (ii) proceedings in the exercise of its jurisdiction under the Extradition Act 2003, and
  - (c) proceedings in the civil division of the Court of Appeal arising out of civil proceedings within paragraph (a) or (b);
- “witness”, in relation to any proceedings, includes a party to the proceedings.

**85F Direction for prohibition of cross-examination in person**

- (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 section.
- (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 section may be made by the court—
  - (a) on an application made by a party to the proceedings, or
  - (b) of its 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 which the court is aware for an offence committed by the party in relation to the witness;
  - (e) any conviction or caution 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;

**Domestic Abuse Bill, *continued***

- (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 section 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.

**85G Directions under section 85F: supplementary**

- (1) A direction under section 85F 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 section 85F 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 its own motion.
- (3) The court may revoke a direction under section 85F 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 section 85F;
  - (b) refusing an application for a direction under section 85F;
  - (c) revoking a direction under section 85F;
  - (d) refusing an application for the revocation of a direction under section 85F.

**85H Alternatives to cross-examination in person**

- (1) This section applies where a party to civil proceedings is prevented from cross-examining a witness in person by virtue of a direction under section 85F.
- (2) The court must consider whether (ignoring this section) 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.

**Domestic Abuse Bill, *continued***

- (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) Subsection (5) applies if, by the end of the period specified under subsection (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 subsection (6) is not responsible to the party.
- (8) For the purposes of this section—
  - (a) a reference to cross-examination includes a reference to continuing to conduct cross-examination;
  - (b) “qualified legal representative” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act) in civil proceedings.

**85I Costs of legal representatives appointed under section 85H(6)**

- (1) The Lord Chancellor may by regulations make provision for the payment out of central funds of sums in respect of—
  - (a) fees or costs properly incurred by a qualified legal representative appointed under section 85H(6), and
  - (b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.
- (2) The regulations may provide for sums payable under subsection (1) to be determined by the Lord Chancellor or such other person as the regulations may specify.
- (3) The regulations may provide for sums payable under subsection (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.

**Domestic Abuse Bill, *continued***

- (4) Regulations under this section may make different provision for different purposes.

**85J Guidance for legal representatives appointed under section 85H(6)**

- (1) The Lord Chancellor may issue guidance in connection with the role which a qualified legal representative appointed under section 85H(6) in connection with any civil proceedings is to play in the proceedings, including (among other things) guidance about the effect of section 85H(7).
- (2) A qualified legal representative appointed under section 85H(6) must have regard to any guidance issued under this section.
- (3) The Lord Chancellor may from time to time revise any guidance issued under this section.
- (4) The Lord Chancellor must publish—
- (a) any guidance issued under this section, and
  - (b) any revisions of that guidance.”

***Member’s explanatory statement***

*This new clause would enable a court in civil proceedings to give a direction prohibiting a party to the proceedings from cross-examining a witness in person, where either the quality of the witness’s evidence would otherwise be diminished, or such cross-examination would be likely to cause significant distress to the witness or party. Where such a direction is given, the court will be able to appoint a legal representative to conduct the cross-examination.*

Secretary Priti Patel  
Secretary Robert Buckland

5

- Clause 60, page 38, line 22, at end insert “, and
- (c) proceedings in the civil division of the Court of Appeal arising out of proceedings within paragraph (a) or (b);”

***Member’s explanatory statement***

*This amendment amends the definition of “family proceedings” in new Part 4B of the Matrimonial and Family Proceedings Act 1984 to include proceedings in the Court of Appeal that relate to family proceedings.*

Secretary Priti Patel  
Secretary Robert Buckland

6

- Clause 60, page 41, line 43, leave out “family”

***Member’s explanatory statement***

*This amendment and amendment 7 would require a court, when deciding whether to make a direction prohibiting cross-examination in person in family proceedings under new section 31U of the Matrimonial and Family Proceedings Act 1984, to have regard to findings of fact made in civil or criminal proceedings as well as family proceedings.*

Secretary Priti Patel  
Secretary Robert Buckland

7

- Clause 60, page 41, line 46, leave out “family”

***Member’s explanatory statement***

*See the explanatory statement for amendment 6.*

## Consideration of Bill: 29th June 2020

---

### **Domestic Abuse Bill, *continued***

Secretary Priti Patel

Secretary Robert Buckland

**8**

Clause **68**, page **51**, line **30**, at end insert “(excluding children treated as victims by virtue of section (*Children as victims of domestic abuse*))”

***Member’s explanatory statement***

*This amendment is consequential on the new clause to be inserted by amendment 1.*

Secretary Priti Patel

Secretary Robert Buckland

**9**

Clause **71**, page **52**, line **37**, after “State” insert “or Lord Chancellor”

***Member’s explanatory statement***

*This amendment is consequential on the new clause to be inserted by amendment 3.*

Secretary Priti Patel

Secretary Robert Buckland

**10**

Clause **71**, page **53**, line **11**, after “State” insert “or Lord Chancellor”

***Member’s explanatory statement***

*This amendment is consequential on the new clause to be inserted by amendment 3.*

---

Secretary Priti Patel

Secretary Robert Buckland

**11**

Title, line **2**, after “Commissioner;” insert “to make provision for the granting of measures to assist individuals in certain circumstances to give evidence or otherwise participate in civil proceedings;”

***Member’s explanatory statement***

*This amendment is consequential on the new clause to be inserted by amendment 3.*

Secretary Priti Patel

Secretary Robert Buckland

**12**

Title, line **3**, after “family” insert “or civil”

***Member’s explanatory statement***

*This amendment is consequential on the new clause to be inserted by amendment 4.*

---