

These notes refer to the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (c.2) which received Royal Assent on 1 March 2021

Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021

EXPLANATORY NOTES

OVERVIEW

4. The Act contains 41 sections and is divided into three parts. Part one deals with domestic abuse (an offence, abusive behaviour and an aggravation) and amendments and guidance. It is separated into three chapters. Part two deals with civil proceedings, including cross-examination and special measures in civil and family proceedings. Part three deals with commencement and the short title of the Act.

Part 1, Chapter 1 – Offence of Domestic Abuse

5. This gives effect to the intention 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.
6. 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, a defence on the grounds of reasonableness, extra-territorial jurisdiction for the new offence, an exception where someone has parental responsibility for a child, alternative offences for conviction and a penalty for the new offence.
7. The Act will recognise in law that domestic abuse is often a course of behaviour which takes place over a period of time. The course of behaviour can consist of psychological and emotional abuse which either cannot be prosecuted or, at the very least, can be inherently challenging to prosecute under existing laws, as well as physical violence and threats which can be prosecuted under existing laws. The new domestic abuse offence will cover partners (including those in an intimate personal relationship), ex-partners and family members. For the purpose of this Explanatory Note these will be referred to as partner/connected person.
8. By enabling a range of domestic abuse incidents, which typically take place over a period of time, to be prosecuted as a single course of behaviour within a new offence, the criminal law will better reflect how victims actually experience such abuse. The Act will also ensure that a course of behaviour

of entirely non-physical abuse of a person's partner/connected person is criminalised.

9. The Act recognises the adverse effect abuse can have on children by including aggravations which will apply to the domestic abuse offence where the victim is under 18 or where a child sees, hears or is present during an incident of abuse or they are used to abuse the connected person, or a reasonable person would consider the abusive behaviour to adversely affect the child – enabling the sentencing to be increased up to the maximum available.

Part 1, Chapter 2 – Aggravation as to Domestic Abuse

10. The Act also provides for a statutory aggravation that an offence, other than the domestic abuse offence, is aggravated by constituting abuse of a partner/connected person where the person convicted of the offence either intended to cause, or else was reckless as to whether their actions would cause, physical or psychological harm to that person.

Part 1, Chapter 3 – Miscellaneous Provision

11. Along with the introduction of the new domestic abuse offence, the statutory aggravator and child aggravator a number of associated reforms to criminal procedure, evidence and sentencing are included within the Act. These reforms are intended to reduce the possibility of an accused person using the processes of the justice system to further exert control and influence over their partner/connected person and will help to minimise the trauma for them while ensuring the proper administration of justice is achieved. The Act also makes provision that a child cruelty offence will apply in relation to non-physical ill-treatment of a child.
12. The Chapter also makes provision in relation to a number of measures to improve the support and protection of victims as well as the operation of the Act. This includes the provision of interim protection measures to those affected by domestic abuse as well as powers to enable information to be shared with schools where there has been a domestic abuse incident affecting a child. The Act also provides for the training of those involved in domestic abuse cases, data collection in relation to the new offence, an independent oversight function and reporting on the operation of the Act.
13. Increased access to legal aid in private family law proceedings is provided for victims of abuse to help reduce the financial burden of settling the position of the care of their children through the courts, and to mitigate the risk of these proceedings being used as another way to perpetuate abuse.

Part 2 – Family and Civil Proceedings

Factors relevant to residence and contact orders

14. The Act amends the Children (Northern Ireland) Order 1995 to require a court considering an application for a residence or contact order to consider any

conviction of the party applying for the order for a domestic abuse offence involving the child.

Prohibition of cross-examination in person

15. The Act prohibits, in family proceedings, cross-examination in person by a party who has been convicted of, given a caution for, or is charged with a specified offence, of a witness who is the victim, or alleged victim, of that offence; and by a party against whom an on-notice injunctive order is in force for the protection of a witness. It also creates a power for the Department to specify evidence of domestic abuse that, if adduced by a party to family proceedings, would prohibit cross-examination in person by a party to whom the evidence relates. The Act further gives a court a discretionary power to direct that a party may not cross-examine in person if it considers that such cross-examination is likely to diminish the quality of evidence or cause significant distress to the witness to be cross-examined.
16. Where cross-examination is prohibited, the Act makes provision enabling the court to appoint a legal representative to conduct the cross-examination on behalf of the party prohibited from so doing, the cost of which will be paid by the Department. It also allows the Department to issue guidance in connection with the role of the appointed legal representative.
17. With regards to civil proceedings, the Act gives a court a discretionary power to prohibit cross-examination in person if certain conditions are met. There is also provision for the court to appoint a legal representative, funded by the Department, to carry out the cross-examination instead and for the Department to issue guidance about their role in the proceedings.

Rules of court on special measures directions in family and civil proceedings

18. The Act requires rules of court to make provision enabling a court to make a special measures direction in family proceedings in relation to a party or witness who is a victim of, or at risk of, domestic abuse, where the court considers that a direction should be made.
19. The Act also requires court rules to make provision enabling a court hearing civil proceedings to make a special measures direction in relation to a party or witness who is a victim, or alleged victim, of specified offences, where this is likely to diminish the quality of their evidence, or, if a party, their participation in the proceedings and the court considers that a direction should be made.