

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

COMMENTARY ON SECTIONS

Part 1, Chapter 1 – Offence of Domestic Abuse

Section 1: The domestic abuse offence

This section makes it an offence for a person to engage in a course of behaviour (defined in section 4(4) as behaviour on at least two occasions) which is abusive of another person with whom they are at the time of the course of behaviour personally connected. Section 5 defines what two people are personally connected. For the purpose of this commentary, these personally connected persons will be referred to as “the accused” and their “partner/connected person”.

Subsection (2) provides that the offence is subject to two further conditions being met. The first of these conditions is that a reasonable person would consider that the course of behaviour would be likely to cause the partner/connected person to suffer physical or psychological harm, which includes fear, alarm and distress (see subsection (3)). The court would be entitled to take account of the circumstances of the case, for example any particular vulnerability of the partner/connected person, in considering whether the accused’s behaviour would be likely to cause them to suffer physical or psychological harm.

The second of these conditions is that the accused must either intend that the behaviour causes their partner/connected person to suffer harm or is reckless as to this. This condition could be met in a reckless situation where, for example, the accused is persistently verbally abusive and demeaning towards their partner/connected person but claims that they did not intend the behaviour to cause harm.

Section 2: What amounts to abusive behaviour

This section sets out what constitutes abusive behaviour for the purpose of the offence. The description is non-exhaustive and it therefore remains open to the court to determine in any individual case that the accused’s behaviour was abusive in some other way, beyond the ways described.

Subsection (2) provides that abusive behaviour includes behaviour which is violent or threatening (including both physical and sexual violence). Subsection (2) also covers behaviour directed at an individual, their child or any other person where the purpose of the behaviour is to have certain effects on the partner/connected person or where a reasonable person would consider it likely to have one or more of the effects.

Subsection (3) sets out, in connection with this latter aspect of the offence, the relevant effects that can indicate that behaviour is abusive. This is intended to ensure that, for example, psychological abuse, or controlling or coercive behaviour that could not previously have been prosecuted, falls within the definition of abusive behaviour (as well as violent or threatening behaviour) and constitutes a criminal offence.

Subsection (3)(a) deals with behaviour which makes the partner/connected person dependent on or subordinate to the accused. This could include, for example, preventing the partner/connected person from having access to money, forcing them to leave their job or education, taking charge of household decision-making to the exclusion of them or treating them as a domestic slave.

Subsection (3)(b) covers behaviour which has the effect of isolating a person from friends, family members or other sources of social interaction or support. This could include, for example, controlling a partner's or connected person's movements; access to their phone or other forms of communication; not allowing visits from, or to, the partner's or connected person's friends or family, or deliberately failing to pass on messages from friends or family.

Subsection (3)(c) refers to behaviour which has the effect of controlling, regulating or monitoring the day-to-day activities of a partner/connected person. This could include, for example, checking their phone, e-mail or social media use, controlling what clothes they can or cannot wear, or placing unreasonable requirements on them, for example, to prepare meals in a particular way at a particular time every day or to answer the phone within three rings.

Subsection (3)(d) deals with behaviour which has the effect of depriving or restricting the freedom of action of a partner/connected person. This addresses behaviour which strips that person of their autonomy, for example, preventing them from attending work or college, preventing them from leaving the house alone, insisting on accompanying them to medical appointments for no good reason, or taking decisions for them in relation to private, individual matters that a person would normally decide for themselves.

Subsection (3)(e) refers to behaviour which has the effect of frightening, humiliating, degrading or punishing a partner/connected person. This could include, for example, abusive name-calling, threats of self-harm, playing 'mind games' that cause the partner/connected person to doubt their self-worth, controlling a partner/connected person's access to the toilet or forcing them to eat food off the floor. It could include various sexually abusive behaviours.

Subsection (4)(a) provides that the reference to violent behaviour includes both physical and sexual violence. Subsection (4)(b) provides that reference in the section to a child means someone under 18 years of age.

Section 3: Impact of behaviour on victim

This section provides that the partner/connected person need not have actually suffered physical or psychological harm for the offence to be committed. It also states that it is not necessary for the effects of the behaviour covered by section 2(3) (such as dependency, subordination, isolation, control, etc.) to have actually been suffered by the partner/connected person for the offence to have been committed.

This is because a reasonable person test applies both in section 1(2)(a) in relation to physical or psychological harm and section 2(2)(c)(ii) in relation to ‘relevant effects’. It is therefore sufficient that a reasonable person would consider it likely that the behaviour would result in the partner/connected person suffering physical or psychological harm, or experiencing a ‘relevant effect’. So, for example, section 2(2)(c) would cover behaviour which a reasonable person would consider likely to frighten, humiliate, degrade, punish or intimidate the partner/ connected person, irrespective of whether they actually suffer fear, humiliation, degradation, punishment or intimidation.

In turn, this section clarifies that evidence is not prevented from being presented of actual harm, or effects arising, as a result of the alleged course of behaviour or the effects that the behaviour actually had on the partner/connected person. Such evidence therefore remains relevant in the case.

Section 4: Meaning of behaviour etc.

This section further explains what is meant by behaviour for the purposes of Chapter 1. Subsection (2) provides that behaviour includes saying or otherwise communicating something as well as doing something (including an intentional failure to do, say, or otherwise communicate something). This could include, for example, a failure to pass on times and dates of appointments or social occasions, a failure to feed a family pet or a failure to speak to or communicate with an individual.

Subsection (3) clarifies that behaviour is directed at a person if it is directed in any way. This would include, for example, behaviour involving or towards property or behaviour that affects the ability to acquire, use, maintain money or other property or to obtain goods or services. This could relate to shared property or property belonging to parents. Property will also include pets or other animals (for example agricultural livestock) whether belonging to the victim or others.

The section also provides that behaviour directed at a person includes behaviour carried out with or through a third party, for example by spying on or reporting on the activities of a partner/connected person. The third party’s involvement could be unwitting or unwilling, as they may be entirely unaware that their

behaviour was helping the accused to abuse their partner/connected person or they may have been coerced into participating in the abuse.

Section 5: Meaning of personal connection

This section defines what two people are personally connected for the purposes of Chapter 1. Subsection (2) provides that two people are personally connected if they are, or have been, married or civil partners or they live together (or have lived together) as if spouses of each other. Two people are also personally connected if they are or have been in an intimate personal relationship with each other or are family members. The term “intimate personal relationship” is intended to cover relationships between two individuals (including young/teenage and same-sex relationships), although the relationship need not be sexual or long-term.

Subsection (3) sets out that a family member covers a person’s parent, grandparent, child, grandchild or sibling. A family member also covers the parent, grandparent, child, grandchild or sibling of the person that they are in a relevant relationship with. Subsection (4) defines that two people are in a relevant relationship if they are married or are in a civil partnership, or they live together as if spouses. Subsection (5) makes provision for the inclusion of half-blood relationships, relationships by affinity and stepchildren when considering family membership.

Section 6: Establishing connection by notice

This section provides a process for establishing, by means of a proposal made by the prosecution in proceedings for the offence, that two individuals are personally connected. The personal connection will be taken to be established unless challenged under the process set out for this.

Section 7: How notice is to be served

This section provides for the service of notices where a relationship, that is two individuals being personally connected, is challenged under section 6. It sets out the process to be applied and the meaning of key terms and their application.

Section 8: Aggravation where victim is under 18

This section provides that an allegation may be specified alongside the domestic abuse offence that it is aggravated because the accused’s partner/connected person was under 18 at the time of any of the behaviour by virtue of which the offence is constituted. This could enable sentencing to be increased up to the maximum available.

Subsection (2) and (3) sets out that, where the charge together with the aggravation is proved, the court must state on conviction that it is aggravated and take the aggravation into account when determining the sentence, as a factor that increases the seriousness of the offence. The court is also required to state

how the aggravation has affected the sentence and in recording the conviction show it as aggravated by reason of the partner/connected person being under 18.

Subsection (4) makes it clear that if the aggravation is not proved, but the charge is proved, conviction is as if the aggravation were not referred to alongside the charge.

Section 9: Aggravation where relevant child is involved

This section provides that an allegation may be specified alongside the domestic abuse offence that it is aggravated, through involving a child (under 18) who is not the accused or the partner/connected person. This includes the child of either person.

Subsection (2) sets out that the domestic abuse offence is aggravated by reason of involving a relevant child if any or all of the aspects set out at (2)(a) - (2)(c) are met.

Subsection (2)(a)(i) provides that the aggravation applies where it is shown that, at any time in commissioning the offence, the accused directed or threatened to direct behaviour at a child. This could include the accused threatening violence towards a child to control or frighten the partner/connected person or being abusive towards the child.

Subsection (2)(a)(ii) provides that the aggravation applies where it is shown that, in committing the offence, the accused made use of the child in directing behaviour at their partner/connected person. This could apply where the accused encourages or directs a child to spy on or report on the day-to-day activities of a partner/connected person. The involvement of the child could be unwittingly or unwillingly.

The aggravation would apply to the involvement of any child in the domestic abuse offence (apart from when the child is the partner/connected person, which would be caught by section 8). This would include, for example, the accused or victim's own child, another child living in or visiting the household, or a neighbour's child.

Subsection (2)(b) provides that the aggravation applies where a child saw, heard or was present during a single incident of the course of behaviour. This could, for example, be a verbal abuse incident or a physical assault and the child need not necessarily be in the same room as the accused and partner/connected person.

Subsection (2)(c) provides that the aggravation applies where a reasonable person considers that the course of behaviour, or an incident of behaviour which the accused directed at a victim as part of the course of behaviour, to be likely to adversely affect the child.

Subsection (3) provides that there does not need to be evidence that a child ever had any awareness, or understanding of the nature, of the accused's behaviour or to have been adversely affected by it.

Subsection (4) sets out that nothing in this section prevents evidence from being led about a child's observations of, or feelings as to, the accused's behaviour, or a child's situation arising from of the accused's behaviour.

Subsections (5) and (6) sets out that, where the charge together with the aggravation is proved, the court must state on conviction that it is aggravated and take the aggravation into account when determining the sentence, as a factor which increases the seriousness of the offence. The court is also required to state how it has affected the sentence and in recording the conviction shows it as aggravated by reason of involving a person being under 18 (who is not the accused or the partner/connected person).

Subsection (7) makes it clear that if the aggravation is not proved, but the charge is proved, conviction is as if the aggravation were not referred to alongside the charge.

Section 10: Behaviour occurring outside the UK

This section provides that domestic abuse offence would be constituted by virtue of the course of behaviour if it consists of or includes behaviour which occurred in a country outside the United Kingdom. The behaviour would need to constitute the domestic abuse offence if it occurred in Northern Ireland and the accused would need to be habitually resident in Northern Ireland or be a UK national (as defined in subsection (2)).

Section 11: Exception where responsibility for children

Subsection (1) provides that the domestic abuse offence does not apply where a person has parental responsibility for another person who is under 16 years of age. It is considered that there are other provisions that deal with, and should more appropriately be used for, direct abuse of a child or young person by their parent or other carer. This includes section 21.

Section 12: Defence on the grounds of reasonableness

This section provides that it is a defence for the accused to show that the course of behaviour was, in the particular circumstances, reasonable. This may apply where, for example, the accused acted to prevent their partner from associating with certain persons or frequenting certain places if they are recovering from alcohol or drug addiction or to restrict their freedom of movement for their own safety due to the effects of suffering from dementia. It is expected the defence would apply in very limited circumstances.

Subsection (2) allows for the accused to adduce evidence that is enough to raise an issue as to whether the course of behaviour was reasonable, with the prosecution then needing to disprove this version of events.

Nothing in this section affects the broader requirement for the prosecution to prove beyond reasonable doubt that the offence has been committed.

Section 13: Alternative available for conviction

This section provides that, where the court is not satisfied that the domestic abuse offence has been committed, it can convict the accused of a specified alternative offence of harassment or putting people in fear of violence under the Protection from Harassment (Northern Ireland) Order 1997. It also makes clear that this section does not affect provisions in section 6(2) of the Criminal Law Act (Northern Ireland) 1967 in relation to alternative verdicts on trial on indictment.

Section 14: Penalty for the offence

This section provides that the maximum penalty on summary conviction (that is in a magistrates' court) is 12 months' imprisonment or a fine up to the statutory maximum (that is, £5,000). Where a case is tried on indictment (that is, in the Crown Court) the maximum penalty is 14 years' imprisonment or a fine or both. The nature of the penalties is intended to reflect the cumulative nature of the offence over time, that it may cover both physical and psychological abuse and also the intimate and trusting nature of the relationships involved.