

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 2 – Aggravation as to Domestic Abuse

Section 15: Aggravation as to domestic abuse

This section provides that any offence (other than the domestic abuse offence) may be aggravated because it involves domestic abuse. The aggravation could be specified alongside charges for all sorts of offences, for example criminal damage, assault, grievous bodily harm, threats to damage property or threats to kill, etc.

Subsections (3) and (4) require that, where the charge as well as 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 the aggravation has affected the sentence and record the conviction in a manner which shows that the offence was aggravated by reason of involving domestic abuse.

Subsection (5) 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 16: What amounts to the aggravation

Section 16 sets out the conditions required for the domestic abuse aggravator to apply. This requires that a reasonable person would consider that the offence would be likely to cause the accused's partner or a connected person to suffer physical or psychological harm (including fear, alarm and distress). A further condition is that the accused either intended the offence to cause their partner/connected person to suffer physical or psychological harm, or was reckless as to whether or not this would be caused.

Subsection (3) provides that the offence itself does not have to have been committed against the accused's partner/connected person, rather it can be against a third party with the purpose of abusing their partner or a connected

person. Also harm does not have to have been caused to the partner/connected person as a result of the offence, rather that a reasonable person would consider that harm would be likely to be caused. As such, the aggravation could be in effect where, for example, the accused commits criminal damage against the friend of their partner, or a connected person, with the intent of causing psychological harm to their partner or a connected person. Subsection (4) ensures that evidence of actual harm remains relevant in the case.

Section 17: Exception regarding the aggravation

Section 17 provides that an offence cannot be aggravated if the partner/connected person is under 16 and the accused has parental responsibility for them. As set out at section 11, 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.

Section 18: Meaning of personal connection

This section defines what two people are personally connected for the purposes of Chapter 2. Subsection (2) provides that two people are personally connected if they are, or have been, married or in a civil partnership 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 19: 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 20: How notice is to be served

This section repeats the provision at section 7 for the purpose of the aggravator. This provides for the service of notices where a relationship is

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challenged under section 19. It sets out the process to be applied and the meaning of key terms and their application.