

*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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1, Chapter 3 – Miscellaneous Provision**

##### ***Section 21: Meaning of ill-treatment etc. in offence provision***

This section amends the child cruelty offence in Section 20 of the Children and Young Persons Act (Northern Ireland) 1968, making clear that non-physical ill treatment of a child (aged under 16), by someone with parental responsibility for them, is an offence. It also provides that references to an offence around unnecessary suffering or injury to a child explicitly state that this relates to the suffering or injury being physical or otherwise, again ensuring that non-physical behaviour is captured.

##### ***Section 22: No right to claim trial by jury***

This section amends Article 29(1) of the Magistrates' Courts (Northern Ireland) Order 1981, the effect of which is to prohibit those accused of the domestic abuse offence before a magistrates' court from the right to elect for trial by jury at Crown Court. This currently covers offences such as intimidation, making or possessing petrol bombs, possession of offensive weapon with intent to commit an offence as well as unnecessary suffering and fighting in relation to the welfare of animals.

##### ***Section 23: Special measures directions***

This section amends Part 2 of the Criminal Evidence (Northern Ireland) Order 1999.

Subsection (2) amends Article 5(4) (witnesses eligible for assistance on grounds of fear or distress about testifying) of the 1999 Order to ensure that the complainant of a domestic abuse offence, as well as any other offence (for example, criminal damage, assault, grievous bodily harm, threats to damage property or threats to kill, etc.) where there is a specification that it is aggravated by reason of involving domestic abuse, is eligible for assistance, such as the use of live links or screens at court, in relation to those proceedings, unless they have informed the court that they do not wish to be eligible for such assistance.

Subsection (3) amends Article 13(4)(a) of the 1999 Order (evidence given in private) to ensure that where proceedings relate to a domestic abuse offence, or any other offence where there is a specification that it is aggravated by reason of involving domestic abuse, a special measures direction may provide for the exclusion of persons from court when the witness is giving evidence.

This section is tied to Section 25 which sets out the meaning of an offence involving domestic abuse.

#### ***Section 24: Prohibition of cross-examination in person***

This section amends the Criminal Evidence (Northern Ireland) Order 1999, the effect of which is to prohibit the accused from cross-examining a partner/connected person in person, where they are to give evidence. This applies in relation to the domestic abuse offence under section 1, as well as any other offence (for example, criminal damage, assault, grievous bodily harm, threats to damage property or threats to kill, etc.) where there is a specification that it is aggravated by reason of involving domestic abuse (under section 15).

This section is tied to Section 25 which sets out the meaning of an offence involving domestic abuse.

#### ***Section 25: Meaning of offence involving domestic abuse etc.***

As noted above, sections 23 and 24 amend the Criminal Evidence (Northern Ireland) Order 1999. This section inserts a new Article 3A to the 1999 Order, which sets out the meaning of an “offence involving domestic abuse” for the purpose of the Order. This includes the domestic abuse offence under section 1, as well as any other offence where there is a specification that it is aggravated by reason of involving domestic abuse (under section 15).

#### ***Section 26: Information-sharing with schools etc.***

Section 26 provides that the Department of Justice may bring forward regulations to enable information to be shared with an education provider about an incident of domestic abuse concerning a child who is a pupil or a student of that provider. The section sets out the extent and nature of the what may be provided for in regulations, including what is deemed to be an education provider (to include pre-school education provision, schools and colleges as well as facilities or settings that provide education or training, who are pupils or students and what is deemed to be a domestic abuse incident concerning a child

The section also makes provision that the regulations can set out circumstances in which information can be shared, deals with enabling powers around unauthorised disclosure of information as well as the offences and penalties associated with this.

### ***Section 27: Protective measures for victims of abuse***

This section provides that the Department may, by regulations, make provision to bring forward steps or measures to protect victims of domestic abuse, including through new Domestic Abuse Protection Notices and Orders (though not necessarily limited to this). The section sets out that regulations may cover both alleged and proven behaviour, the age thresholds that would apply, provision around the giving of notices and making of orders, conditions to be met and what requirements (including restrictions or prohibitions) may be imposed. The section also sets out that regulations may include provision about who may make applications for orders, proceedings in which orders may be made or applications may not be needed, notification requirements, the making of orders and appeals. The regulation making powers can also cover geographic extent, breaches, powers of arrest as well as offences and penalties. Regulations may provide for such further matters as are considered appropriate and may also include provision amending statutory provisions.

### ***Section 28: Eligibility of victims for civil legal aid***

This section provides for a waiver of the financial eligibility rules that would otherwise apply in determining a person's application for civil legal services to enable them to be represented as a respondent in proceedings under Article 8 of the Children (Northern Ireland) Order 1995. These proceedings involve contact, residence, specific issues and prohibited steps orders relating to the care of children by people with parental responsibility for them. The waiver would apply in circumstances where the person is a victim of domestic abuse, and where the person bringing the application against them is their abuser.

### ***Section 29: Proposals as to availability of civil legal aid***

This section requires the Department of Justice to bring forward a report setting out proposals to reduce the cost for the victim of defending proceedings brought against them by an abusive partner, and for making it more difficult for abusers to access civil legal services to bring vexatious applications and to perpetuate their abuse through the courts.

Section 29 comes into operation the day after Royal Assent.

### ***Section 30: Guidance about domestic abuse***

This section provides that the Department of Justice in Northern Ireland must issue guidance about Part 1 of the Act (that is the domestic abuse offence and aggravation) or any such other matters as it considers appropriate as to criminal law or procedure relating to domestic abuse in Northern Ireland. The Department must keep any issued guidance about domestic abuse, under this section, under review and revise that guidance as necessary in light of review. A person exercising public functions to whom the guidance relates must have regard to it in the exercise of those functions. The guidance (including revised guidance) must be published.

### ***Section 31: Guidance on data collection***

This provides that the Department of Justice may issue guidance to relevant bodies about the sort of information which it seeks to obtain from them for the purpose of the assessment by it of the operation of Part 1 of the Act. It also requires the Department of Justice to have regard to information which it obtains from the relevant bodies in relation to the operation of Part 1 when determining the steps (if any) that could be taken by it for the purpose of ensuring the effectiveness of the operation of legislation around the new offence. The relevant bodies are the PSNI, the Public Prosecution Service other bodies as the Department considers appropriate.

### ***Section 32: Training within relevant bodies***

This section places a duty on the Police Service of Northern Ireland, the Public Prosecution Service and any additional public body that has functions within the Criminal Justice System in Northern Ireland (specified by the Department in Regulations), to ensure that training on the effect of Part 1 of the Act is provided to personnel, as it considers appropriate.

Subsection (2) places a duty of the Department of Justice for training Northern Ireland Courts and Tribunal staff as an Agency of the Department, as well as any additional agency that has functions within the criminal justice system in Northern Ireland and which the Department selects in connection with this section.

Subsection (3) requires that training must be provided at least annually and would be mandatory for personnel/staff that have responsibilities for dealing with cases involving domestic abuse, to ensure the effective discharge of their responsibilities in relation to such cases.

Subsection (4) requires the Department of Justice to publish a statement setting out the level of participation in training by personnel/staff in each relevant organisation, within 18 months from the day on which Chapters 1 and 2 come into operation, and annually thereafter.

### ***Section 33: Independent oversight of this Part***

This section requires the Department, within one year of Royal Assent of the Act, to appoint an independent person to report and make recommendations in relation to the operation of Part 1 and to advise and make recommendations on the content and review of the guidance under section 30. The independent person is required to produce their first report within two years of Chapter 1 and 2 coming into operation, for the Department to lay the report at the Assembly and publish it. Annual reports are then required. The Department of Justice may specify by regulations, a date on which the oversight function stops. This must not be before seven years from the day on which Chapter 1 and 2 came into operation.

Section 33 comes into operation the day after Royal Assent.

***Section 34: Report on the operation of this Part***

This section requires the Department of Justice to prepare a report on the operation of the domestic abuse offence, child aggravators and generic aggravator.

Subsection (2) sets out that the report is to set out a range of information including: the number of offences recorded by the Police Service of Northern Ireland (broken down by police district); the number of files submitted to the Public Prosecution Service; prosecutions; convictions; and the average length of time for disposal of cases.

Subsection (3) provides that the report must include information about the level of training under section 32. Subsection (3) and (4) set out that the report must also include information about how court business is arranged; the experience at court of witnesses; awareness raising; activities to support the operation of Part 1; any issuing, review or revision of guidance by the Department under section 28; and anything else considered appropriate by the Department.

Subsection (5) also requires the report to be laid at the Assembly and published.

Subsection (6) provides that there are ongoing reporting requirements, with each reporting period three years after the previous one. The first reporting period is two to three years after Chapters 1 and 2 come into operation. The reporting requirement would no longer apply if regulations to this effect were brought forward, with ten years after the domestic abuse offence comes into operation being the earliest that this can take effect.