



2021 CHAPTER 2

PART 1

Domestic abuse: offence and aggravation

CHAPTER 1

Offence of domestic abuse

Course of abusive behaviour

The domestic abuse offence

- 1.—(1) A person (“A”) commits an offence if—
- (a) A engages in a course of behaviour that is abusive of another person (“B”),
 - (b) A and B are personally connected to each other at the time, and
 - (c) both of the further conditions are met.
- (2) The further conditions are—
- (a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm, and
 - (b) that A—
 - (i) intends the course of behaviour to cause B to suffer physical or psychological harm, or
 - (ii) is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.
- (3) The references in this section to psychological harm include fear, alarm and distress.

(4) The offence under this section is to be known as the domestic abuse offence.

What amounts to abusive behaviour

2.—(1) This section contains provision for determining for the purposes of this Chapter when behaviour of a person (“A”) is abusive of another person (“B”).

(2) Behaviour that is abusive of B includes (in particular)—

- (a) behaviour directed at B that is violent,
- (b) behaviour directed at B that is threatening,
- (c) behaviour directed at B, at a child of B or at someone else that—
 - (i) has as its purpose (or among its purposes) one or more of the relevant effects, or
 - (ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects.

(3) The relevant effects are of—

- (a) making B dependent on, or subordinate to, A,
- (b) isolating B from friends, family members or other sources of social interaction or support,
- (c) controlling, regulating or monitoring B’s day-to-day activities,
- (d) depriving B of, or restricting B’s, freedom of action,
- (e) making B feel frightened, humiliated, degraded, punished or intimidated.

(4) In subsection (2)—

- (a) the reference in paragraph (a) to violent behaviour includes both sexual violence and physical violence,
- (b) in paragraph (c), “child” means a person under 18 years of age.

(5) None of the paragraphs of subsection (2) or (as the case may be) (3) is to be taken to limit the meaning of any of the other paragraphs of that subsection.

Impact of behaviour on victim

3.—(1) The domestic abuse offence can be committed whether or not A’s behaviour actually causes B to suffer harm of the sort referred to in section 1(2).

(2) A’s behaviour can be abusive of B by virtue of section 2(2)(c) whether or not A’s behaviour actually has one or more of the relevant effects set out in section 2(3).

(3) Nothing in this Chapter prevents evidence from being led in proceedings for the domestic abuse offence about—

- (a) harm actually suffered by B as a result of A's behaviour,
 - (b) effects which A's behaviour actually had on B.
- (4) In this section, "A" and "B" are as referred to in section 1 or (as the case may be) 2.

Meaning of behaviour etc.

- 4.—(1) This section has effect for the purposes of this Chapter.
- (2) Behaviour is behaviour of any kind, including (for example)—
- (a) saying or otherwise communicating something as well as doing something,
 - (b) intentionally failing—
 - (i) to do something, or
 - (ii) to say or otherwise communicate something.
- (3) Behaviour is directed at a person if it is directed at the person in any way, including (for example)—
- (a) through—
 - (i) conduct relating to the person's ability to acquire, use or maintain money or other property or the person's ability to obtain goods or services, or
 - (ii) other conduct concerning or towards property, or
 - (b) by making use of a third party,
- as well as in a personal or direct manner.
- (4) A course of behaviour involves behaviour on at least two occasions.

*Personal connection***Meaning of personal connection**

- 5.—(1) This section has effect for the purposes of this Chapter.
- (2) Two people ("A" and "B") are personally connected to each other if any of these applies—
- (a) they are, or have been, married to each other,
 - (b) they are, or have been, civil partners of each other,
 - (c) they are living together, or have lived together, as if spouses of each other,
 - (d) they are, or have been, otherwise in an intimate personal relationship with each other, or
 - (e) they are members of the same family.
- (3) They are members of the same family—

- (a) if B is A's parent, grandparent, child, grandchild, brother or sister, or
- (b) if—
 - (i) one of them is in a relevant relationship with someone else ("C"), and
 - (ii) the other of them is C's parent, grandparent, child, grandchild, brother or sister.
- (4) One person is in a relevant relationship with someone else if—
 - (a) they are married to, or are civil partners of, each other, or
 - (b) they are living together as if spouses of each other.
- (5) In determining family membership—
 - (a) a relationship of the half blood or by affinity is to be treated as a relationship of the whole blood, and
 - (b) a stepchild of a person is to be treated as the person's child.

Establishing connection by notice

6.—(1) In proceedings in respect of a charge against a person ("A") of the domestic abuse offence, the prosecutor may serve notice on A or A's solicitor proposing that the matter of A and B being personally connected as required for proof of the charge is to be taken as established for the purposes of the proceedings.

- (2) Notice by the prosecutor under this section must be—
 - (a) in writing, and
 - (b) served no later than the point in the proceedings when the prosecutor complies with section 3 of the Criminal Procedure and Investigations Act 1996 (or purports to comply with it).

(3) If notice is served by the prosecutor under this section, the matter is to be taken as established for the purposes of the proceedings unless it is challenged in accordance with this section.

- (4) The matter is challenged in accordance with this section by—
 - (a) A or A's solicitor serving on the Director of Public Prosecutions for Northern Ireland, not later than the seventh day after the day of service of notice by the prosecutor under this section, written counter-notice of objection stating the reason for objection, or
 - (b) such later objection as the court allows in the interests of justice.

(5) In this section, "B" is the person in relation to whom the offence is alleged to have been committed.

How notice is to be served

- 7.—(1) This section governs service in proceedings by virtue of section 6—

- (a) of notice on—
 - (i) a person (“A”) charged in the proceedings, or
 - (ii) A’s solicitor, or
- (b) of notice that is counter-notice on the Director of Public Prosecutions for Northern Ireland (“the DPP”).
- (2) Notice is served on the person by—
 - (a) handing it to the person,
 - (b) leaving it at the person’s proper address,
 - (c) sending it by post to the person at the person’s proper address, or
 - (d) where subsection (3) applies, sending it to the person by electronic means.
- (3) This subsection applies where—
 - (a) the person on whom notice is to be served has indicated that it may be served on the person by being sent to an electronic address and in an electronic form specified by the person in that regard, and
 - (b) it is sent to that address in that form.
- (4) Notice sent by electronic means is, unless the contrary is proved, to be treated as having been served at 09:00 on the working day immediately following the day on which it was sent.
- (5) For the purposes of this section—
 - (a) an electronic address is any number or address used for sending or receiving documents or information by electronic means,
 - (b) a working day is a day other than a Sunday or a public holiday.
- (6) The references in this section to a person’s proper address are to—
 - (a) where the person is A, A’s usual or last known address,
 - (b) where the person is—
 - (i) A’s solicitor, or
 - (ii) the DPP,the address of the person’s office.
- (7) In its application to service as governed by this section, section 24(1) of the Interpretation Act (Northern Ireland) 1954 is to be read as if the reference in that section to the person’s usual or last known place of abode or business were a reference to the person’s proper address.

Aggravating factors

Aggravation where victim is under 18

8.—(1) It may be specified as an allegation alongside a charge of the domestic abuse offence against a person (“A”) that the offence is aggravated by reason of the person in relation to whom the offence is alleged to have been committed (“B”) having been under 18 years of age at the time of any of the behaviour by virtue of which the offence is constituted.

(2) Subsection (3) applies where—

- (a) an allegation of aggravation is specified as mentioned in subsection (1), and
- (b) the aggravation as well as the charge is proved.

(3) The court must—

- (a) state on conviction that the offence is aggravated by reason of B having been under 18 years of age at the relevant time,
- (b) record the conviction in a way that shows that the offence is so aggravated,
- (c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and
- (d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.

(4) However, if—

- (a) the charge is proved, but
- (b) the aggravation is not proved,

A’s conviction is as if there were no reference to the aggravation alongside the charge.

Aggravation where relevant child is involved

9.—(1) It may be specified as an allegation alongside a charge of the domestic abuse offence against a person (“A”) that the offence is aggravated by reason of involving a relevant child.

(2) For the purposes of subsection (1), the domestic abuse offence is aggravated by reason of involving a relevant child if (any or all)—

- (a) at any time in the commission of the offence—
 - (i) A directed, or threatened to direct, behaviour at the child, or
 - (ii) A made use of the child in directing behaviour at B, or
- (b) the child saw or heard, or was present during, an incident of behaviour which A directed at B as part of the course of behaviour, or

Status: This is the original version (as it was originally enacted).

- (c) a reasonable person would consider the course of behaviour, or an incident of A's behaviour that forms part of the course of behaviour, to be likely to adversely affect the child.
- (3) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child—
 - (a) has ever had any awareness or understanding of A's behaviour, or
 - (b) has ever been adversely affected by A's behaviour.
- (4) Nothing in this section prevents evidence from being led about—
 - (a) a child's observations of, or feelings as to, A's behaviour, or
 - (b) a child's situation so far as arising because of A's behaviour.
- (5) Subsection (6) applies where—
 - (a) an allegation of aggravation is specified as mentioned in subsection (1), and
 - (b) the aggravation as well as the charge is proved.
- (6) The court must—
 - (a) state on conviction that the offence is aggravated by reason of involving a relevant child,
 - (b) record the conviction in a way that shows that the offence is so aggravated,
 - (c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and
 - (d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.
- (7) However, if—
 - (a) the charge is proved, but
 - (b) the aggravation is not proved,A's conviction is as if there were no reference to the aggravation alongside the charge.
- (8) In this section—
 - (a) "relevant child" means a person under 18 years of age who is not A or B,
 - (b) "B" is the person in relation to whom the offence is alleged to have been committed.

Applicable rules and penalty

Behaviour occurring outside the UK

10.—(1) If—

- (a) a person's course of behaviour consists of or includes behaviour occurring in a country outside the United Kingdom,
- (b) the domestic abuse offence would be constituted by virtue of the course of behaviour if it occurred in Northern Ireland, and
- (c) the person is a United Kingdom national or is habitually resident in Northern Ireland,

the person commits the domestic abuse offence as if the course of behaviour occurred in Northern Ireland.

(2) In this section—

“country” includes territory,

“United Kingdom national” means an individual who is—

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 is a British subject, or
- (c) a British protected person within the meaning of that Act.

Exception where responsibility for children

11. —(1) A person (“A”) does not commit the domestic abuse offence in relation to another person (“B”) by engaging in behaviour that is abusive of B at a time when—

- (a) B is under 16 years of age, and
- (b) A has responsibility for B.

(2) Section 36 of the Children and Young Persons Act (Northern Ireland) 1968 applies for the purposes of determining whether A has responsibility for B as it applies for the purposes of determining whether a person has responsibility for a child or young person within the meaning of that Act.

Defence on grounds of reasonableness

12.—(1) In proceedings in respect of a charge against a person (“A”) of the domestic abuse offence, it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances.

(2) That is shown if—

- (a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (1), and
- (b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (1).

Alternative available for conviction

13.—(1) In proceedings in respect of a charge against a person (“A”) of the domestic abuse offence, A may be convicted of an alternative offence if the facts proved against A—

- (a) do not amount to the domestic abuse offence, but
- (b) do amount to the alternative offence.

(2) For the purposes of subsection (1), the alternative offences are—

- (a) an offence under Article 4 of the Protection from Harassment (Northern Ireland) Order 1997 (harassment),
- (b) an offence under Article 6 of that Order (putting people in fear of violence).

(3) This section is without prejudice to section 6(2) of the Criminal Law Act (Northern Ireland) 1967 (alternative verdicts on trial on indictment).

Penalty for the offence

14. A person who commits the domestic abuse offence is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).