



2021 CHAPTER 2

PART 1

Domestic abuse: offence and aggravation

CHAPTER 2

Aggravation as to domestic abuse

Sentencing aggravation

Aggravation as to domestic abuse

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

(2) An offence as mentioned in subsection (1) does not include the domestic abuse offence (see section 1).

(3) Subsection (4) 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.

(4) The court must—

- (a) state on conviction that the offence is aggravated by reason of involving domestic abuse,
- (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.

(5) 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.

What amounts to the aggravation

16.—(1) For the purposes of section 15, an offence committed by a person (“A”) is aggravated by reason of involving domestic abuse if the three listed conditions are met.

(2) The listed conditions are—

- (a) that a reasonable person would consider the commission of the offence by A to be likely to cause another person (“B”) to suffer physical or psychological harm,
- (b) that A—
 - (i) intends the commission of the offence to cause B to suffer physical or psychological harm, or
 - (ii) is reckless as to whether the commission of the offence causes B to suffer physical or psychological harm, and
- (c) that A and B are personally connected to each other at the time.

(3) An offence committed by A can be aggravated by virtue of this section whether or not—

- (a) the offence is committed against B, or
- (b) the commission of the offence actually causes B to suffer harm of the relevant sort.

(4) Nothing in this section prevents evidence from being led in proceedings for the offence about harm actually suffered by B as a result of A's commission of the offence.

(5) The references in this section to psychological harm include fear, alarm and distress.

Exception regarding the aggravation

17.—(1) For the purposes of section 16, an offence committed by a person (“A”) cannot be aggravated in relation to another person (“B”) by reason of involving domestic abuse if, at the time of the commission of the offence—

- (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.