



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

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(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.

Commencement Information

II S. 15 in operation at 21.2.2022 by S.R. 2022/57, art. 2(o)

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.

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I2 S. 16 in operation at 21.2.2022 by S.R. 2022/57, art. 2(p)

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.

Commencement Information

I3 S. 17 in operation at 21.2.2022 by S.R. 2022/57, art. 2(q)

Personal connection

Meaning of personal connection

18.—(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.

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- (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.

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I4 S. 18 in operation at 21.2.2022 by S.R. 2022/57, art. 2(r)

Establishing connection by notice

19.—(1) In proceedings in respect of a charge against a person (“A”) of an offence alongside which there is specification of an allegation of aggravation as mentioned in section 15, 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 aggravation 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.

Commencement Information

I5 S. 19 in operation at 21.2.2022 by S.R. 2022/57, art. 2(s)

Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, CHAPTER 2. (See end of Document for details)

How notice is to be served

20.—(1) This section governs service in proceedings by virtue of section 19—

- (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.

Changes to legislation: *There are currently no known outstanding effects for the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, CHAPTER 2. (See end of Document for details)*

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I6 [S. 20](#) in operation at 21.2.2022 by [S.R. 2022/57](#), **art. 2(t)**

Changes to legislation:

There are currently no known outstanding effects for the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, CHAPTER 2.