



2021 CHAPTER 2

PART 1

Domestic abuse: offence and aggravation

CHAPTER 3

Miscellaneous provision

Definitions for child cruelty offence

Meaning of ill-treatment etc. in offence provision

21. In section 20 (cruelty to persons under 16) of the Children and Young Persons Act (Northern Ireland) 1968—

- (a) in subsection (1), the words from “(including” to “derangement)” are repealed,
- (b) before paragraph (a) of subsection (2) insert—
 - “(za) a reference to—
 - (i) ill-treatment is to ill-treatment whether physical or otherwise;
 - (ii) suffering or injury is to suffering or injury whether physical or otherwise;”.

Criminal cases involving domestic abuse

No right to claim trial by jury

22. In Article 29(1) of the Magistrates' Courts (Northern Ireland) Order 1981 (right to claim trial by jury for certain summary offences), after subparagraph (p) insert—

“(q) section 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (the domestic abuse offence).”.

Special measures directions

23.—(1) The Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

(2) In Article 5 (witnesses eligible for assistance on grounds of fear or distress about testifying)—

(a) in paragraph (4), for “a sexual offence or a slavery or human trafficking offence” substitute “an offence listed in paragraph (5)”,

(b) after paragraph (4) insert—

“(5) The offences are—

(a) a sexual offence,

(b) a slavery or human trafficking offence,

(c) an offence involving domestic abuse (see Article 3A).”.

(3) In Article 13(4)(a) (evidence given in private), for “a sexual offence or a slavery or human trafficking offence” substitute “an offence listed in Article 5(5)”.

Prohibition of cross-examination in person

24.—(1) The Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

(2) After Article 22 insert—

“Complainants in proceedings involving domestic abuse

22A. No person charged with an offence involving domestic abuse (see Article 3A) may in any criminal proceedings cross-examine in person a witness who is the complainant, either—

(a) in connection with that offence, or

(b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.”.

(3) In Article 23 (child complainants and other child witnesses)—

- (a) in paragraph (3), after sub-paragraph (cc) insert—
 - “(cd) an offence involving domestic abuse (see Article 3A);”,
- (b) in paragraph (4)(a), for “or (cc)” substitute “, (cc) or (cd)”.
- (4) In Article 24 (direction prohibiting accused from cross-examining particular witness)—
 - (a) in paragraph (1), for “neither of Articles 22 and 23” substitute “none of Articles 22, 22A and 23”,
 - (b) in paragraph (3)(e)—
 - (i) after “Article”, where it first occurs, insert “22A or”, and
 - (ii) after “22” insert “, 22A”.
- (5) In Article 26(1) (defence representation for purposes of cross-examination), after “22,” insert “22A,”.
- (6) In Article 27(1) (warning to jury), after “22,” insert “22A,”.

Meaning of offence involving domestic abuse etc.

25.—(1) The Criminal Evidence (Northern Ireland) Order 1999 is amended as follows (in connection with sections 23 and 24).

(2) In Article 2(2) (interpretation), in the definition of “the complainant”, after “committed” insert “(but see also Article 3A(2) to (5))”.

(3) After Article 3 insert—

“Meaning of “offence involving domestic abuse” etc.

3A.—(1) In this Order, “offence involving domestic abuse” means—

- (a) an offence under section 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (the domestic abuse offence),
- (b) an offence of any kind in respect of which there is specification in accordance with section 15 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 that the offence is aggravated by reason of involving domestic abuse.

(2) In this Order, “the complainant”, in relation to an offence (or alleged offence) falling within paragraph (1)(b) means a person in respect of whom the prosecutor gives notice to the court asserting that—

- (a) the offence is so aggravated in relation to the person, and
- (b) the accused was personally connected to the person at the time.

(3) A reference to a person in paragraph (2) is not limited to someone against or in relation to whom the offence was (or is alleged to have been) committed.

(4) Paragraph (2) does not, where in any case—

- (a) notice as referred to in that paragraph is given, and
- (b) the offence is also mentioned in Article 3,

prevent someone else from additionally being the complainant in relation to the offence within the meaning of Article 2(2).

(5) Article 2(2), but not paragraph (2), determines who the complainant is in relation to the offence where no notice as referred to in that paragraph is given in the case.”.

Information-sharing and victim protection

Information-sharing with schools etc.

26.—(1) The Department of Justice may by regulations make provision—

- (a) enabling or requiring a relevant person to inform a designated person in relation to an education provider of an incident of domestic abuse concerning a child who is a pupil or a student of the education provider,
- (b) for the purpose of or in connection with functions exercisable by a relevant person or a designated person accordingly.

(2) Here—

- (a) a relevant person is a person of a description (or acting in a particular capacity) specified in regulations under this section,
- (b) a designated person in relation to an education provider is a person of a description (or acting in a particular capacity) specified in regulations under this section,
- (c) an education provider is—
 - (i) a school or a college,
 - (ii) a non-school body which provides pre-school education (or any facility or setting at which pre-school education is provided), or
 - (iii) any other body or facility which provides education or training of any kind (or any facility or setting at which education or training of any kind is provided),

(d) an incident is one whether alleged or proved,

(e) a child is a person under 18 years of age.

(3) A relevant person, as may be referred to in regulations under this section, must be a person who has functions of a public nature.

(4) Regulations under this section may include provision—

- (a) describing what is to be regarded as an incident of domestic abuse concerning a child,

- (b) concerning—
 - (i) pupils or students generally, or particular categories of pupil or student,
 - (ii) education providers generally, or particular categories of provider (or particular facilities or settings within different categories),
- (c) stating who is to be regarded as a pupil or a student of an education provider,
- (d) setting out circumstances in or reasons for which—
 - (i) a relevant person may or must give information to a designated person or a designated person may or must give information to a relevant person,
 - (ii) a different person (including of a description specified) may or must give information to a relevant person or a designated person,
- (e) with respect to information—
 - (i) regulating or limiting the use or disclosure of information by a relevant person or a designated person,
 - (ii) specifying offences and penalties for unauthorised use or disclosure of information.

(5) Regulations under this section may include provision involving such further matters as the Department of Justice considers appropriate.

(6) Regulations under this section may include provision amending statutory provisions (as construed in accordance with section 1(f) of the Interpretation Act (Northern Ireland) 1954).

(7) Regulations under this section may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

Protective measures for victims of abuse

27.—(1) The Department of Justice may by regulations make provision—

- (a) enabling or requiring steps to be taken or measures to be imposed for protecting a person from abusive behaviour,
- (b) for the purpose of or in connection with such steps or measures for protecting a person from abusive behaviour.

(2) Steps or measures which may be provided for in regulations under this section are not limited to notices or orders as referred to in this section (and nothing in the following subsections of this section is to the prejudice of the generality of what may be provided for in regulations under this section).

(3) Protecting a person from abusive behaviour is—

- (a) protecting a person from abusive behaviour perpetrated by someone to whom the person is personally connected, or
 - (b) protecting a person from risk of abusive behaviour perpetrated by someone to whom the person is personally connected.
- (4) What amounts to abusive behaviour is to be construed, or whether two people are personally connected to each other is to be determined, in the same way as is provided for in Chapter 1.
- (5) Regulations under this section—
- (a) may include provision to the effect that steps or measures are available on the basis of alleged as well as proven behaviour,
 - (b) must include provision to the effect that steps or measures—
 - (i) are for protecting persons who are at least 16 years of age, and
 - (ii) are to apply in relation to perpetrators or alleged perpetrators of abusive behaviour who are at least 18 years of age.
- (6) Regulations under this section may include provision—
- (a) about the giving of notices to perpetrators or alleged perpetrators of abusive behaviour (or for review or withdrawal of notices) by a police officer,
 - (b) setting out grounds for giving notices, conditions to be met before notices may be given or circumstances in which notices may be given (including matters to be taken into account before notices are given),
 - (c) setting out—
 - (i) what requirements, including restrictions or prohibitions, may be imposed by notices (and for how long and as to which places),
 - (ii) information to be included in notices,
 - (d) allowing notices to impose requirements relating to, as well as relating to persons for whose protection notices are given, children of or residing with persons for whose protection notices are given.
- (7) Regulations under this section may include provision—
- (a) about the making of orders against perpetrators or alleged perpetrators of abusive behaviour (including orders extending, varying or revoking previous orders) by a court,
 - (b) setting out grounds for making orders, conditions to be met before orders may be made or circumstances in which orders may be made (including matters to be taken into account before orders are made),
 - (c) setting out—
 - (i) what requirements, including restrictions or prohibitions, may be imposed by orders,

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- (ii) conditions to be met for imposing electronic monitoring requirements in orders,
- (d) allowing orders to impose requirements relating to, as well as relating to persons for whose protection orders are made, children of or residing with persons for whose protection orders are made,
- (e) allowing orders—
 - (i) to apply for specific periods (or to have temporary effect),
 - (ii) to apply generally or to be expressly limited to particular localities,
- (f) specifying—
 - (i) who may make applications for orders, whether notification of applications is required or circumstances in which applications may or must be made,
 - (ii) proceedings in which orders may be made or circumstances in which applications need not be made in such proceedings,
- (g) in relation to proceedings as to orders—
 - (i) prescribing rules of procedure to be followed,
 - (ii) stating what evidence may be heard or must be considered,
 - (iii) making special measures available for the benefit of witnesses,
 - (iv) deeming proceedings to be either civil or criminal proceedings,
- (h) enabling—
 - (i) rules of court, county court rules or magistrates' courts rules to make provision for procedures in relation to orders (so far as other powers to make rules cannot be relied on for this),
 - (ii) appeals to be made to a court against the making of orders or against decisions not to make orders (and for appeals to be final).
- (8) Regulations under this section may include provision—
 - (a) imposing notification requirements on persons subject to orders,
 - (b) conferring on police officers powers exercisable in particular circumstances to take samples or images from or of persons believed by them to be subject to such notification requirements.
- (9) Regulations under this section may include provision to the effect that—
 - (a) persons who are subject to orders that are not expressly limited to particular localities must comply with such orders—
 - (i) in all parts of the United Kingdom,
 - (ii) outside the United Kingdom if particular conditions in relation to having a residential connection with Northern Ireland, or being a national of the United Kingdom, are met,

- (b) every other provision in such regulations, particularly with respect to breaches of orders, applies accordingly.
- (10) Regulations under this section may include provision—
- (a) conferring on police officers powers of arrest exercisable with a warrant or powers of arrest exercisable without a warrant—
 - (i) in relation to breaches or suspected breaches of notices,
 - (ii) in relation to breaches or suspected breaches of orders,
 - (b) requiring persons arrested for breaches or suspected breaches of notices or orders to be brought before a court within specified time limits,
 - (c) authorising persons arrested for breaches or suspected breaches of notices or orders to be detained in custody (pending being brought before a court)—
 - (i) in specified circumstances,
 - (ii) for periods not exceeding specified limits,
 - (d) authorising persons brought before a court in relation to breaches or suspected breaches of notices or orders to be remanded in custody or granted bail (with or without conditions attached)—
 - (i) in specified circumstances,
 - (ii) for periods not exceeding specified limits,
 - (e) specifying offences and penalties—
 - (i) for breaches of notices or for breaches of orders,
 - (ii) for breaches of notification requirements by persons subject to notices or orders.
- (11) Regulations under this section may include provision regulating or limiting the use of, or controlling or requiring the retention or destruction of, samples or images taken from or of persons under such regulations.
- (12) Regulations under this section may include provision—
- (a) for the Department of Justice to—
 - (i) issue or publish guidance about the exercise of functions under such regulations (except judicial functions),
 - (ii) keep such guidance under review or revise such guidance in light of review,
 - (b) specifying who is to have regard to such guidance when issued or published or circumstances in which regard is to be had to such guidance.
- (13) Regulations under this section may include provision involving such further matters as the Department of Justice considers appropriate.

(14) Regulations under this section may include provision amending statutory provisions (as construed in accordance with section 1(f) of the Interpretation Act (Northern Ireland) 1954).

(15) A draft of regulations under this section must be laid before the Assembly no later than the end of the period of 2 years beginning with the day on which Chapters 1 and 2 come into operation.

(16) Regulations under this section may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

Civil legal aid for victims of abuse

Eligibility of victims for civil legal aid

28.—(1) In the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015, in regulation 10 (waiver of eligibility limits in proceedings relating to domestic violence or forced marriage)—

(a) after paragraph (1) insert—

“(1A) This regulation applies to an application by a client for the funding of representation in proceedings for an order that is an Article 8 order within the meaning of the Children (Northern Ireland) Order 1995 if—

(a) the client is the respondent in the proceedings, and

(b) the Director is satisfied that—

(i) the client is or appears to be the victim of abusive behaviour perpetrated or apparently perpetrated by the applicant seeking the order, and

(ii) the applicant seeking the order is someone to whom the client is personally connected.”,

(b) after paragraph (4) insert—

“(5) The following apply for the purposes of paragraph (1A) as they apply for the purposes of Chapter 1 of Part 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (to give meanings to certain expressions)—

(a) section 2 (as read with section 3(2)) of that Act,

(b) sections 4 and 5 of that Act.”.

(2) Guidance under section 3 of the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014 must describe the basis, particularly as regards applicable information about the commission or alleged commission of an offence involving domestic abuse, on which the Director may be satisfied

as mentioned in regulation 10(1A) of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015.

(3) An offence involving domestic abuse is—

(a) an offence under section 1, or

(b) an offence of any kind that is aggravated as provided for in section 15.

(4) The Director is as defined in the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015.

(5) This section is without prejudice to—

(a) any power to make regulations under the Access to Justice (Northern Ireland) Order 2003,

(b) the power to give guidance under section 3 of the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014.

Proposals as to availability of civil legal aid

29.—(1) The Department of Justice must lay before the Assembly a report setting out the Department's proposals for—

(a) making regulations under the Access to Justice (Northern Ireland) Order 2003 for the prescribed purpose, or

(b) taking some different course of action for the prescribed purpose.

(2) A report under this section must be laid before the Assembly before the end of the period of 2 years beginning with the day on which this Act receives Royal Assent.

(3) The prescribed purpose is that of—

(a) reducing (including to nil), in specific circumstances, financial costs to be incurred by a relevant client with respect to receiving funded services in or in relation to qualifying proceedings to which an abusive person as well as the relevant client are parties, or

(b) preventing, so far as reasonably possible—

(i) qualifying proceedings from being initiated unduly against a relevant client by an abusive person by virtue of having access to funded services, or

(ii) qualifying proceedings to which both a relevant client and an abusive person are parties from being prolonged unduly by the abusive person by virtue of having access to funded services.

(4) Qualifying proceedings are—

(a) proceedings for an order that is an Article 8 order within the meaning of the Children (Northern Ireland) Order 1995, or

- (b) proceedings on appeal arising from proceedings for an order that is an Article 8 Order within the meaning of the Children (Northern Ireland) Order 1995.
- (5) A relevant client is a client who is or appears to be the victim of abusive behaviour.
- (6) An abusive person is someone—
- (a) who is the perpetrator or apparent perpetrator of abusive behaviour of which the relevant client is or appears to be the victim, and
 - (b) to whom the relevant client is personally connected.
- (7) A conclusion by the Director, when acting by virtue of regulations made under the Access to Justice (Northern Ireland) Order 2003 for the prescribed purpose—
- (a) as to whether—
 - (i) a person is or appears to be the victim of abusive behaviour, or
 - (ii) someone is the perpetrator or apparent perpetrator of abusive behaviour, or
 - (b) as to whether two people are personally connected to each other,
- may be reached, particularly on the basis of applicable information about the commission or alleged commission of an offence involving domestic abuse, having regard to appropriate guidance given under section 3 of the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014.
- (8) What amounts to abusive behaviour is to be construed, or whether two people are personally connected to each other is to be determined, in the same way as is provided for in Chapter 1.
- (9) An offence involving domestic abuse is—
- (a) an offence under section 1, or
 - (b) an offence of any kind that is aggravated as provided for in section 15.
- (10) A reference in this section to a client or funded services, or to the Director, is to be construed in accordance with the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015.

Guidance and operational matters

Guidance about domestic abuse

- 30.—**(1) The Department of Justice must issue guidance about—
- (a) the effect of this Part, and
 - (b) such other matters as the Department considers appropriate as to criminal law or procedure relating to domestic abuse in Northern Ireland.

(2) A person exercising public functions to whom guidance issued under this section relates must have regard to it in the exercise of those functions.

(3) The Department of Justice must—

- (a) keep any guidance issued under this section under review, and
- (b) revise any guidance issued under this section if the Department considers revision to be necessary in light of review.

(4) The Department of Justice must publish any guidance issued or revised under this section.

(5) Nothing in this section permits the Department of Justice to issue guidance to a court or tribunal.

Guidance on data collection

31.—(1) The Department of Justice—

- (a) may issue guidance to the 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 this Part, and
- (b) must have regard to information which it obtains from the relevant bodies in relation to the operation of this Part when determining the steps (if any) that could be taken by it for the purpose of ensuring the effectiveness of the operation of this Part.

(2) The relevant bodies are—

- (a) the Police Service of Northern Ireland,
- (b) the Public Prosecution Service for Northern Ireland, and
- (c) such additional bodies as the Department considers appropriate.

Training within relevant bodies

32.—(1) Each of the following must provide such training on the effect of this Part as it considers appropriate for its personnel—

- (a) the Police Service of Northern Ireland,
- (b) the Public Prosecution Service for Northern Ireland,
- (c) any additional public body that has functions within the criminal justice system in Northern Ireland and which the Department of Justice specifies in connection with this section in regulations.

(2) The Department of Justice must provide such training on the effect of this Part as the Department considers appropriate for—

- (a) staff within the Northern Ireland Courts and Tribunal Service,

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- (b) staff of any additional agency of the Department that has functions within the criminal justice system in Northern Ireland and which the Department selects in connection with this section.
- (3) A body which must under this section provide training is to do so—
 - (a) at least annually, and
 - (b) as something to be undertaken as mandatory—
 - (i) by such of the relevant personnel or (as the case may be) staff as have responsibilities for dealing with cases involving domestic abuse, and
 - (ii) for the purpose of ensuring the effective discharge of their responsibilities in relation to such cases.
- (4) The Department of Justice must—
 - (a) publish a statement setting out information held or obtained by the Department about the level of participation by the relevant personnel or (as the case may be) staff in training provided by a body in accordance with this section, and
 - (b) do so—
 - (i) before the end of the period of 18 months beginning with the day on which Chapters 1 and 2 come into operation, and
 - (ii) annually thereafter.
- (5) Regulations under this section are subject to negative resolution.

Independent oversight of this Part

- 33.—**(1) The Department of Justice must appoint a person—
- (a) to—
 - (i) report to the Department on the person’s assessment of the effectiveness of this Part, and
 - (ii) make recommendations to the Department in relation to the operation of this Part, and
 - (b) to advise, and make recommendations to, the Department on the content and review of guidance under section 30.
- (2) A report under this section must be completed—
- (a) before the end of the period of 2 years beginning with the day on which Chapters 1 and 2 come into operation, and
 - (b) annually thereafter.
- (3) A report under this section—
- (a) must be sent to the Department of Justice by the person appointed as soon as practicable after the report is completed, and

- (b) must be—
 - (i) laid before the Assembly by the Department, and
 - (ii) published by the Department,as soon as practicable after the report is received by the Department from the person appointed.
- (4) An appointment under this section is for the person appointed to act independently of the Department of Justice.
- (5) The first appointment under this section must be made before the end of the period of 1 year beginning with the day on which this Act receives Royal Assent.
- (6) The preceding subsections of this section cease to have effect at such time, which must not be before the end of the period of 7 years beginning with the day on which Chapters 1 and 2 come into operation, as the Department of Justice may by regulations specify.
- (7) Regulations under this section are subject to negative resolution.

Report on the operation of this Part

- 34.—**(1) The Department of Justice must prepare a report, covering the reporting period, in relation to the following categories of offence—
- (a) an offence under section 1 (including as alleged to be aggravated as referred to in section 8 or 9),
 - (b) an offence of any kind that is alleged to be aggravated as referred to in section 15.
- (2) A report under this section must set out this information—
- (a) the number of—
 - (i) offences under section 1 as recorded by the Police Service of Northern Ireland on the basis of allegations made to them (including as recorded by reference to police districts),
 - (ii) files submitted by the Police Service to the Public Prosecution Service for Northern Ireland in respect of offences within each of the categories,
 - (iii) cases prosecuted by the Public Prosecution Service for offences within each of the categories,
 - (iv) convictions in cases prosecuted by the Public Prosecution Service for offences within each of the categories (particularly where such offences are proved to be aggravated as referred to in section 8 or 9 or (as the case may be) in section 15),
 - (b) the average length of time, for offences within the categories as a whole—

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- (i) from recording of cases by the Police Service on the basis of allegations made to them,
 - (ii) to disposal of cases at court (disregarding appeal processes).
- (3) A report under this section is to include, so far as available—
 - (a) information about the level of participation by persons in training provided under section 32,
 - (b) information about—
 - (i) how court business is arranged so as to ensure the efficient disposal of cases for offences within the categories as a whole,
 - (ii) the experience at court of witnesses (including witnesses who are children) in cases for offences within the categories as a whole.
- (4) A report under this section is to include, in addition—
 - (a) any views that the Department of Justice considers appropriate to give in relation to the operation of this Part (including the Department's assessment of the effectiveness of this Part),
 - (b) information about—
 - (i) any issuing, review or revision of guidance by the Department under section 30,
 - (ii) any steps taken by the Department for raising public awareness (particularly awareness of victims) of matters relating to domestic abuse in Northern Ireland,
 - (iii) any activities undertaken by the Department in supporting the operation of this Part,
 - (iv) any further things that the Department considers appropriate.
- (5) A report under this section must be—
 - (a) laid before the Assembly by the Department of Justice, and
 - (b) published by the Department,as soon as practicable after the report is completed by the time and in the form determined by the Department.
- (6) As for the reporting period—
 - (a) the first reporting period is the period, of not less than 2 years and not more than 3 years beginning with the day on which Chapters 1 and 2 come into operation, determined by the Department of Justice,
 - (b) each subsequent reporting period is the period of 3 years coming after the previous reporting period.
- (7) The preceding subsections of this section cease to have effect at such time, which must not be before the end of the period of 10 years beginning with

the day on which Chapters 1 and 2 come into operation, as the Department of Justice may by regulations specify.

(8) Regulations under this section are subject to negative resolution.