

Status: This version of this provision is prospective.

Changes to legislation: *There are currently no known outstanding effects for the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, Section 39. (See end of Document for details)*



2021 CHAPTER 2

PART 2

Provision for civil proceedings

Cross-examination and special measures

PROSPECTIVE

Special measures directions in civil proceedings generally

39 In the Civil Evidence (Northern Ireland) Order 1997, after Article 7G (as inserted by this Act) insert—

“Special measures directions in civil proceedings

Special measures in civil proceedings: victims of specified offences

7H.—(1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person (“P”) where—

- (a) P is a party to or witness in civil proceedings, and
- (b) P is the victim, or alleged victim, of a specified offence.

(2) Rules under paragraph (1) must provide for the court to consider, on the application of a party or of the court's own motion—

- (a) whether—
 - (i) the quality of P's evidence, or

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- (ii) where P is a party to the proceedings, P's participation in the proceedings,
is likely to be diminished for reasons arising because P is the victim or alleged victim, and
 - (b) if so, whether a special measures direction (or more than one direction) should be made.
- (3) Provision in rules by virtue of paragraph (2)(b) may include provision about what factors the court is to take into account when considering whether a special measures direction should be made, in particular (but not limited to)—
- (a) the availability of the special measures in question, and
 - (b) any views expressed by P.
- (4) For the purposes of this Article—
- (a) P is the victim of a specified offence if another person has been convicted of, or given a caution for, the offence,
 - (b) P is the alleged victim of a specified offence if another person has been charged with the offence.
- (5) In this Article—
- “caution” means—
- (a) in the case of Northern Ireland—
 - (i) a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or
 - (ii) any other caution given to a person in Northern Ireland in respect of an offence which, at the time the caution is given, the person has admitted,
 - (b) in the case of England and Wales—
 - (i) a conditional caution given under section 22 of the Criminal Justice Act 2003,
 - (ii) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or
 - (iii) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted,
 - (c) in the case of Scotland, anything corresponding to a caution falling within paragraph (b) (however described) which is given to a person in respect of an offence under the law of Scotland,

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“civil proceedings” means proceedings (other than proceedings which are family proceedings for the purposes of Article 12 of the Family Law (Northern Ireland) Order 1993) in—

- (a) the High Court, or
 - (b) a county court,
- exercising its civil jurisdiction,

“conviction” means—

- (a) wherever occurring in Northern Ireland, Scotland, or England and Wales—
 - (i) a conviction by or before a court, or
 - (ii) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged,
- (b) wherever occurring within or outside the United Kingdom, a conviction in service disciplinary proceedings,

“rules of court” includes county court rules as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954,

“service disciplinary proceedings” means—

- (a) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the meaning of that Act),
- (b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence),
- (c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976,

“special measures” means such measures specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings,

“special measures direction” means a direction by the court granting special measures,

“specified offence” means an offence which is specified, or of a description specified, in regulations made by the Department of Justice.

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(6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this Article to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—

(a) Article 6 of the Criminal Justice (Northern Ireland) Order 1996 or any corresponding provision,

(b) section 187 of the Armed Forces Act 2006 or any corresponding provision.

(7) For the purposes of this Article—

“offence” includes an offence under a law that is no longer in force,

“corresponding provision” means a corresponding statutory provision or any other corresponding legislative provision (and includes an earlier provision or a provision applying in any part of the United Kingdom).

Power to alter definition of civil proceedings

7I.—(1) The Department of Justice may by regulations amend Article 7H so as to alter the definition of “civil proceedings” in paragraph (5) of that Article.

(2) Regulations that contain (with or without other provisions) provision under paragraph (1) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(3) Regulations that contain provision under Article 7H(5) are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft and approved by a resolution of the Assembly).”

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