



Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021

CHAPTER 2

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Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021

CHAPTER 2

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Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021

2021 CHAPTER 2

An Act to create a course of conduct offence and a sentencing aggravation concerning domestic abuse and make rules as to procedure and giving evidence in criminal cases involving domestic abuse; regulate the conduct of civil proceedings in particular circumstances; and make provision for connected purposes.

[1st March 2021]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

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—

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- (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—

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- (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
- (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,

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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—

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- (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).

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,

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- (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.

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.

(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

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).

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(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

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,

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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.

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 sub-paragraph (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.

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(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

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- (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,
 - (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),

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- (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)—

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- (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

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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—

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- (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.

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(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.

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- (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,
 - (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—
 - (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,

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(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.

PART 2

PROVISION FOR CIVIL PROCEEDINGS

Residence and contact orders

Factors relevant to residence and contact orders

35. In the Children (Northern Ireland) Order 1995, in Article 12A (residence and contact orders and domestic violence)—

(a) in paragraph (1), after “in favour of” insert “—

(a) any person, the court shall have regard to any conviction of the person for a domestic abuse offence involving the child,

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- (b) ”,
- (b) after paragraph (1) insert—
- “(1A) For the purposes of paragraph (1)(a), a domestic abuse offence involving the child is—
- (a) an offence under section 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 if—
 - (i) the offence is aggravated as provided for in section 9 of that Act, and
 - (ii) the aggravation of the offence relates to the child, or
 - (b) an offence of any kind (apart from one under section 1 of that Act) if—
 - (i) the offence is aggravated as provided for in section 15 of that Act, and
 - (ii) the child is not the person against whom the offence was committed but the aggravation of the offence relates to the child.”,
- (c) in paragraph (2), for “paragraph (1)” substitute “paragraph (1)(b)”,
- (d) in paragraph (3), after “Article 3” insert “(and in that paragraph neither sub-paragraph limits the effect of the other sub-paragraph)”.

Cross-examination and special measures

Prohibition of cross-examination in person in family proceedings

36. In the Family Law (Northern Ireland) Order 1993, after Article 11 insert—

“Prohibition of cross-examination in person in family proceedings

Prohibition of cross-examination in person: introductory

11A.—(1) For the purposes of Articles 11B to 11I—

“family proceedings” means—

- (a) proceedings which are family proceedings for the purposes of Article 12 (family proceedings rules), or
- (b) proceedings in a court of summary jurisdiction sitting to hear domestic proceedings within the meaning of Article 88 of the Magistrates’ Courts (Northern Ireland) Order 1981,

“witness”, in relation to any proceedings, includes a party to the proceedings.

(2) The Department of Justice may by regulations amend this Article so as to alter the definition of “family proceedings” in paragraph (1).

Prohibition of cross-examination in person: victims of offences

11B.—(1) In family proceedings, no party to the proceedings who has been convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence.

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(2) In family proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of or given a caution for, or is charged with, that offence.

(3) Paragraphs (1) and (2) do not apply to a conviction that is spent for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978 unless evidence in relation to the conviction is admissible in or may be required in the proceedings by virtue of Article 8(2), (3) or (4) of that Order.

(4) Cross-examination in breach of paragraph (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.

(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,

“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,

“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),

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(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,

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

(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).

Prohibition of cross-examination in person: persons protected by injunctions etc.

11C.—(1) In family proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.

(2) In family proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.

(3) Cross-examination in breach of paragraph (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.

(4) In this Article, “protective injunction” means an order, injunction or interdict specified, or of a description specified, in regulations made by the Department of Justice.

(5) For the purposes of this Article, a protective injunction is an “on-notice” protective injunction if—

(a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or

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- (b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.

Prohibition of cross-examination in person: evidence of domestic abuse

11D.—(1) In family proceedings, where specified evidence is adduced that a person who is a party to the proceedings has engaged in behaviour that was abusive of a witness to whom that party is personally connected, that party may not cross-examine the witness in person.

(2) In family proceedings, where specified evidence is adduced that a person who is a witness has engaged in behaviour that was abusive of a party to the proceedings to whom the witness is personally connected, that party to the proceedings may not cross-examine the witness in person.

(3) In this Article, “specified evidence” means evidence specified, or of a description specified, in regulations made by the Department of Justice.

(4) Regulations under paragraph (3) may provide that any evidence which satisfies the court that a person has engaged in abusive behaviour, or abusive behaviour of a specified description, is specified evidence for the purposes of this Article.

(5) The following apply for the purposes of this Article 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.

Direction for prohibition of cross-examination in person: other cases

11E.—(1) In family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—

- (a) none of Articles 11B to 11D operates to prevent the party from cross-examining the witness, and
- (b) it appears to the court that—
 - (i) the quality condition or the significant distress condition is met, and
 - (ii) it would not be contrary to the interests of justice to give the direction.

(2) The “quality condition” is met if the quality of evidence given by the witness on cross-examination—

- (a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and
- (b) would be likely to be improved if a direction were given under this Article.

(3) The “significant distress condition” is met if—

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- (a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and
 - (b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.
- (4) A direction under this Article may be made by the court—
- (a) on an application made by a party to the proceedings, or
 - (b) of its own motion.
- (5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard to (among other things)—
- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person,
 - (b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person,
 - (c) the nature of the questions likely to be asked, having regard to the issues in the proceedings,
 - (d) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,
 - (e) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,
 - (f) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness,
 - (g) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party,
 - (h) any relationship (of whatever nature) between the witness and the party.
- (6) Any reference in this Article to the quality of a witness's evidence is to its quality in terms of completeness, coherence and accuracy.
- (7) For this purpose, "coherence" refers to a witness's ability in giving evidence to give answers which—
- (a) address the questions put to the witness, and
 - (b) can be understood, both individually and collectively.

Directions under Article 11E: supplementary

11F.—(1) A direction under Article 11E has binding effect from the time it is made until the witness in relation to whom it applies is discharged.

(2) But the court may revoke a direction under Article 11E before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—

- (a) on an application made by a party to the proceedings, or

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(b) of its own motion.

(3) The court may revoke a direction under Article 11E on an application made by a party to the proceedings only if there has been a material change of circumstances since—

- (a) the direction was given, or
- (b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.

(4) The court must state its reasons for—

- (a) giving a direction under Article 11E,
- (b) refusing an application for a direction under Article 11E,
- (c) revoking a direction under Article 11E,
- (d) refusing an application for the revocation of a direction under Article 11E.

Alternatives to cross-examination in person

11G.—(1) This Article applies where a party to family proceedings is prevented from cross-examining a witness in person by virtue of any of Articles 11B to 11E.

(2) The court must consider whether (ignoring this Article) there is a satisfactory alternative means—

- (a) for the witness to be cross-examined in the proceedings, or
- (b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.

(3) If the court decides that there is not, the court must—

- (a) invite the party to the proceedings to arrange for a qualified legal representative to act for the party for the purpose of cross-examining the witness, and
- (b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose.

(4) Paragraph (5) applies if, by the end of the period specified under paragraph (3)(b), either—

- (a) the party has notified the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness, or
- (b) no notification has been received by the court and it appears to the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness.

(5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative appointed by the court to represent the interests of the party.

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(6) If the court decides that it is, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the party.

(7) A qualified legal representative appointed by the court under paragraph (6) is not responsible to the party except in so far as acting in the interests of the party by virtue of this Article.

(8) For the purposes of this Article—

(a) a reference to cross-examination includes a reference to continuing to conduct cross-examination,

(b) “qualified legal representative” means a legal representative who has a right of audience in relation to the proceedings before the court.

Costs of legal representatives appointed under Article 11G(6)

11H.—(1) The Department of Justice must pay such sums as the Department may determine in respect of—

(a) fees or costs properly incurred by a qualified legal representative appointed under Article 11G(6), and

(b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

(2) Regulations made by the Department of Justice may provide for sums payable under paragraph (1)—

(a) to be such amounts as are specified in the regulations,

(b) to be calculated in accordance with—

(i) a rate or scale specified in the regulations, or

(ii) other provision made by or under the regulations.

Guidance for legal representatives appointed under Article 11G(6)

11I.—(1) The Department of Justice may issue guidance in connection with the role which a qualified legal representative appointed under Article 11G(6) in connection with any family proceedings is to play in the proceedings, including (among other things) guidance about the effect of Article 11G(7).

(2) A qualified legal representative appointed under Article 11G(6) must have regard to any guidance issued under this Article.

(3) The Department of Justice may from time to time revise any guidance issued under this Article.

(4) The Department of Justice must publish—

(a) any guidance issued under this Article, and

(b) any revisions of guidance issued under this Article.

Regulations under Articles 11A to 11H

11J.—(1) Any power of the Department of Justice to make regulations under Articles 11A to 11H includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

(2) Regulations that contain (with or without other provisions) provision under Article 11A(2) 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 Articles 11B to 11H are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft before and approved by a resolution of the Assembly).”.

Special measures directions in family proceedings

37. In the Family Law (Northern Ireland) Order 1993, after Article 11J (as inserted by this Act) insert—

“Special measures directions in family proceedings

Special measures in family proceedings: victims of abusive behaviour

11K.—(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 family proceedings,
- (b) P is, or is at risk of being, subjected to abusive behaviour by a person who is—
 - (i) a party to the proceedings,
 - (ii) a relative of a party to the proceedings (other than P), or
 - (iii) a witness in the proceedings, and
- (c) P and that person are personally connected.

(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, whether a special measures direction (or more than one direction) should be made.

(3) Provision in rules by virtue of paragraph (2) 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) The following apply for the purposes of this Article 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.

(5) In this Article—

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“family proceedings” means—

- (a) proceedings which are family proceedings for the purposes of Article 12 (family proceedings rules),
- (b) proceedings in a court of summary jurisdiction when exercising its jurisdiction under one or more of the following—
 - (i) the Domestic Proceedings (Northern Ireland) Order 1980,
 - (ii) Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989,
 - (iii) the Children (Northern Ireland) Order 1995,
 - (iv) the Family Homes and Domestic Violence (Northern Ireland) Order 1998,
 - (v) Schedule 16 to the Civil Partnership Act 2004,

“relative” has the meaning given by Article 2(2) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998,

“rules of court” includes—

- (a) rules of court under Article 12, and
- (b) magistrates’ courts rules,
as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954,

“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.

Power to alter definition of family proceedings

11L.—(1) The Department of Justice may by regulations amend Article 11K so as to alter the definition of “family 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.”.

Prohibition of cross-examination in person in civil proceedings generally

38. In the Civil Evidence (Northern Ireland) Order 1997, after Article 7 insert—

“Prohibition of cross-examination in person in civil proceedings

Prohibition of cross-examination in person: introductory

7A.—(1) For the purposes of Articles 7B to 7F—

“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,

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“witness”, in relation to any proceedings, includes a party to the proceedings.

(2) The Department of Justice may by regulations amend this Article so as to alter the definition of “civil proceedings” in paragraph (1).

Direction for prohibition of cross-examination in person

7B.—(1) In civil proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if it appears to the court that—

- (a) the quality condition or the significant distress condition is met, and
- (b) it would not be contrary to the interests of justice to give the direction.

(2) The “quality condition” is met if the quality of evidence given by the witness on cross-examination—

- (a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and
- (b) would be likely to be improved if a direction were given under this Article.

(3) The “significant distress condition” is met if—

- (a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and
- (b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.

(4) A direction under this Article may be made by the court—

- (a) on an application made by a party to the proceedings, or
- (b) of the court’s own motion.

(5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard to (among other things)—

- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person,
- (b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person,
- (c) the nature of the questions likely to be asked, having regard to the issues in the proceedings,
- (d) any conviction or caution (of any kind) of which the court is aware for an offence committed by the party in relation to the witness,
- (e) any conviction or caution (of any kind) of which the court is aware for an offence committed by the witness in relation to the party,

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- (f) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,
- (g) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,
- (h) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness,
- (i) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party,
- (j) any relationship (of whatever nature) between the witness and the party.

(6) Any reference in this Article to the quality of a witness's evidence is to its quality in terms of completeness, coherence and accuracy.

(7) For this purpose, "coherence" refers to a witness's ability in giving evidence to give answers which—

- (a) address the questions put to the witness, and
- (b) can be understood, both individually and collectively.

Directions under Article 7B: supplementary

7C.—(1) A direction under Article 7B has binding effect from the time it is made until the witness in relation to whom it applies is discharged.

(2) But the court may revoke a direction under Article 7B before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—

- (a) on an application made by a party to the proceedings, or
- (b) of the court's own motion.

(3) The court may revoke a direction under Article 7B on an application made by a party to the proceedings only if there has been a material change of circumstances since—

- (a) the direction was given, or
- (b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.

(4) The court must state its reasons for—

- (a) giving a direction under Article 7B,
- (b) refusing an application for a direction under Article 7B,
- (c) revoking a direction under Article 7B,
- (d) refusing an application for the revocation of a direction under Article 7B.

Alternatives to cross-examination in person

7D.—(1) This Article applies where a party to civil proceedings is prevented from cross-examining a witness in person by virtue of Article 7B.

(2) The court must consider whether (ignoring this Article) there is a satisfactory alternative means—

- (a) for the witness to be cross-examined in the proceedings, or
- (b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.

(3) If the court decides that there is not, the court must—

- (a) invite the party to the proceedings to arrange for a qualified legal representative to act for the party for the purpose of cross-examining the witness, and
- (b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose.

(4) Paragraph (5) applies if, by the end of the period specified under paragraph (3)(b), either—

- (a) the party has notified the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness, or
- (b) no notification has been received by the court and it appears to the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness.

(5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative appointed by the court to represent the interests of the party.

(6) If the court decides that it is, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the party.

(7) A qualified legal representative appointed by the court under paragraph (6) is not responsible to the party except in so far as acting in the interests of the party by virtue of this Article.

(8) For the purposes of this Article—

- (a) a reference to cross-examination includes a reference to continuing to conduct cross-examination,
- (b) “qualified legal representative” means a legal representative who has a right of audience in relation to the proceedings before the court.

Costs of legal representatives appointed under Article 7D(6)

7E.—(1) The Department of Justice must pay such sums as the Department may determine in respect of—

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- (a) fees or costs properly incurred by a qualified legal representative appointed under Article 7D(6), and
 - (b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.
- (2) Regulations made by the Department of Justice may provide for sums payable under paragraph (1)—
- (a) to be such amounts as are specified in the regulations,
 - (b) to be calculated in accordance with—
 - (i) a rate or scale specified in the regulations, or
 - (ii) other provision made by or under the regulations.

Guidance for legal representatives appointed under Article 7D(6)

7F.—(1) The Department of Justice may issue guidance in connection with the role which a qualified legal representative appointed under Article 7D(6) in connection with any civil proceedings is to play in the proceedings, including (among other things) guidance about the effect of Article 7D(7).

(2) A qualified legal representative appointed under Article 7D(6) must have regard to any guidance issued under this Article.

(3) The Department of Justice may from time to time revise any guidance issued under this Article.

- (4) The Department of Justice must publish—
- (a) any guidance issued under this Article, and
 - (b) any revisions of guidance issued under this Article.

Regulations under Articles 7A to 7E

7G.—(1) Any power of the Department of Justice to make regulations under Articles 7A to 7E includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

(2) Regulations that contain (with or without other provisions) provision under Article 7A(2) 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 Articles 7B to 7E are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft before and approved by a resolution of the Assembly).”.

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
 - (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,

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(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,

“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.

(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—

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- (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).”.

PART 3

COMMENCEMENT AND SHORT TITLE

Commencement

40.—(1) This section and section 41 come into operation on the day after the day on which this Act receives Royal Assent.

(2) Section 29 comes into operation on the day after the day on which this Act receives Royal Assent.

(3) Section 33 comes into operation on the day after the day on which this Act receives Royal Assent.

(4) The other provisions of this Act come into operation on such day or days as the Department of Justice may by order appoint.

(5) An order under this section may contain such transitional, transitory or saving provision as the Department of Justice considers appropriate.

Short title

41. This Act may be cited as the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021.



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Published by TSO (The Stationery Office), a Williams Lea company,
and available from:

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www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

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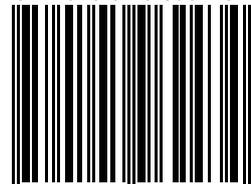
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ISBN 978-0-10-596243-4



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