



2021 CHAPTER 2

PART 1

Domestic abuse: offence and aggravation

CHAPTER 1

Offence of domestic abuse

*Aggravating factors*

**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,
- 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.