

EXPLANATORY MEMORANDUM TO

The Domestic Abuse Information-sharing with Schools etc. Regulations (Northern Ireland) 2022

ISBN 9780338018694

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Section 26 of the Domestic Abuse and Civil Proceedings (Northern Ireland) Act 2021 and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1. Regulation 1 provides the name of the Regulations, that is the Domestic Abuse Information-sharing with Schools etc. Regulations (Northern Ireland) 2022. It also provides that the Regulations will come into operation on 1 April 2022.
- 2.2. Regulation 2 provides definitions for key terms used in the Regulations.
- 2.3. Abusive behaviour is as defined in the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (the 2021 Act).
- 2.4. A child is a pupil or student, as defined with the Regulations.
- 2.5. A class teacher is a classroom assistant, lecturer, course instructor or member of teaching staff, including substitute lecturers, substitute course instructors and substitute members of teaching staff and other relevant support staff at an education provider.
- 2.6. A designated person at an education provider is either the key adult safeguarding lead (or their deputy); the designated child protection officer (or their deputy); the designated safeguarding officer (or their deputy); or any other person carrying out similar functions.
- 2.7. The Education Authority is the body established by section 1(1) of the Education Act (Northern Ireland) 2014 and for the purposes of these Regulations refers to members of its staff carrying out a child protection or safeguarding function.
- 2.8. Education providers covered by the Regulations include nursery schools, non-school bodies providing pre-school education and any other facilities or settings at which pre-school education is provided. Grant-aided and independent primary schools, secondary schools and schools providing both primary and secondary education are also captured by the regulations. Further Education colleges, the College of Agriculture, Food and Rural Enterprise (CAFRE) in Northern Ireland and bodies or facilities which are contracted by the Department for the Economy to provide publically funded vocational training programmes or apprenticeships are also deemed to be education providers for the purpose of these regulations.

- 2.9. A child is deemed to be a pupil of such an education provider if they are of compulsory school age or in their immediate pre-school year and are registered for a funded pre-school place through to being registered with a school under the age of 18. In addition, a student is someone who is registered with such a provider and who has achieved compulsory school age but is under the age of 18. This includes further education colleges, the College of Agriculture, Food and Rural Enterprise and those registered on publically funded vocational training programmes or apprenticeships provided for by the Department of the Economy.
- 2.10. A relevant incident is a police recorded incident of domestic abuse that the police reasonably believe constitutes an incident of domestic abuse concerning a child or any incident (or potential incident) involving domestic abuse that comes to the attention of the police which they reasonably believe constitutes an incident of domestic abuse concerning a child.
- 2.11. A relevant person is a police officer or member of police support staff.
- 2.12. Relevant support staff includes staff at an education provider, other than a class teacher, who acts in a pastoral care role, acts in a disability support role or who is a member of education and training support staff.
- 2.13. Regulation 3 provides that a disclosure can be made by a relevant person (police officer or member of police staff) to a designated person (safeguarding lead) if there has been a relevant incident (a police recorded incident of domestic abuse, or any incident (or potential incident)), which it is reasonably believed constitutes an incident of domestic abuse concerning a child and disclosure of information is necessary for the purposes of enabling the designated person to effectively take account of the needs of the child, any impact that the incident may have had on them and to provide support to that child, where appropriate.
- 2.14. Regulation 3 sets out what information may be shared as set out below:
- (a) the date, location and approximate time of the incident;
 - (b) the nature of the incident;
 - (c) the severity of the incident, where relevant;
 - (d) the name and date of birth of the child that the incident concerned and their usual address, where different from the location of incident;
 - (e) who the incident involved and their relationship, if any, to the child;
 - (f) information about whether or not the child was present, or in the immediate vicinity of where the incident occurred, and if in the home, where the child was in the home;
 - (g) information about where a child was neither present or in the vicinity of the incident but by reason of being present at the scene shortly afterwards (for example) perceived the aftermath;
 - (h) such other information relating to the incident as the relevant person reasonably believes is necessary for the purposes mentioned.
- 2.15. It will not necessarily be the case that all of this information may need to be provided, rather it will be dependant on the particular circumstances of the case.

- 2.16. Regulation 4 provides that a domestic abuse incident concerning a child captures any incident (including a potential incident) involving domestic abuse where five conditions are met, that:
- 2.17. (a) a person may have engaged in abusive behaviour of another person;
(b) a reasonable person would consider such behaviour to be likely to cause the person to suffer physical or psychological harm (including fear, alarm or distress);
(c) the person may have intended to cause the other person to suffer physical or psychological harm, or may have been reckless as to whether or not they would suffer physical or psychological harm;
(d) the two individuals are personally connected; and
(e) the incident concerns a child.
- 2.18. For the purpose of these Regulations, two individuals are personally connected to each other if they are, or have been, married or civil partners or they live together (or have lived together) as if spouses of each other. Two people are also personally connected if they are or have been in an intimate personal relationship with each other or are close family members. The term ‘intimate personal relationship’ is intended to cover relationships between two individuals (including young/teenage and same-sex relationships), although the relationship need not be sexual or long-term.
- 2.19. A family member covers a person’s parent, grandparent, child, grandchild or sibling. A family member also covers the parent, grandparent, child, grandchild or sibling of the person that they are in a relevant relationship with. Two people are in a relevant relationship if they are married or are in a civil partnership, or they live together as if spouses. Half-blood relationships, relationships by affinity and stepchildren are also included when considering family membership.
- 2.20. The behaviour does not have to be carried out against the potential direct victim, it could be directed at someone else for the purposes of causing fear, alarm or distress to them. In addition, the behaviour does not have to actually cause them to suffer physical or psychological harm, nor does it have to result in a charge, summons or offence.
- 2.21. Information will not be shared where the abuser has parental responsibility for a victim who is under 16, in line with the domestic abuse offence (and offences aggravated by domestic abuse) provided for under the 2021 Act. This type of abuse, involving a parent and child, would fall under child cruelty offences (which was expanded under the 2021 Act to provide for non-physical abuse) and it is considered that this would already be reported to the school via existing child protection arrangements.
- 2.22. There is a need to ensure that the information sharing provisions under these regulations do not cut across current procedures and protections, rather that the new information sharing supplements this. Abuse by a parent against their 16 or 17 year old child would fall within this model, along with the other scenarios listed in the following paragraph. This is intended to ensure that there is also an appropriate linkage to the parent legislation and what is deemed to be a domestic abuse offence or an

offence aggravated by domestic abuse. It also ensures that information sharing would apply where a child is affected by domestic abuse, and while perhaps not a direct victim, the child aggravator would apply under the 2021 Act (if there were to be an offence).

- 2.23. For the purpose of these information sharing provisions, which are in addition to (and supplementing) the arrangements that already exist in relation to child cruelty offences and wider child protection, an incident concerns a child if:
- (a) the alleged abuser is a child, e.g. sibling abuse, abuse in a teenage relationship or abuse against another family member;
 - (b) the child may be a direct victim of domestic abuse, e.g. where a young person is abused by their boyfriend/girlfriend or where there is abusive behaviour between young siblings. Where a child or young person is abused by a parent, or a person that has parental responsibility for them, and a child cruelty offence could potentially apply it is considered that this should be captured by current information sharing provisions.
 - (c) a child is not the direct victim but abusive behaviour has been directed at them, or threatened to be directed at them, for the purposes of causing fear, alarm or distress to the direct victim;
 - (d) a child is not the direct victim but use has been made of the child in directing behaviour at the direct victim;
 - (e) a child who is not the alleged abuser or victim saw, heard, or was present at the time of the incident during which a person directed behaviour at someone that that person was personally connected with (partner, former partner or family member, etc.); or (f) a reasonable person would consider the behaviour to be likely to adversely affect a child (this would not apply where the behaviour involves parental responsibility under (a) and (b), aligning with the parent primary legislation).
- 2.24. For sub-paragraphs (c) to (f) there does not need to be evidence that the child had any awareness or understanding of the alleged perpetrator's behaviour, or that they were adversely affected by it.
- 2.25. Regulation 5 enables a designated person (such as a safeguarding lead, designated child protection officer or designated safeguarding officer (or their deputies)) to share information with a relevant person (police officer or member of police staff), in instances where the police has already disclosed a relevant incident to them, and for example more information comes to light. It also enables the designated person to share information with the police when a child has disclosed directly to them (without there having been a prior notification of a relevant incident from the police) or where a class teacher has shared information that a child has disclosed to them.
- 2.26. Regulation 5 also provides that information may be shared between the relevant person (police officer or member of police staff) and the Education Authority, if there has been a relevant incident of domestic abuse concerning a child and the relevant person wishes to disclose this to a designated person, but they do not know what education provider the child is registered with (where the adult involved in the incident does not provide this detail). This includes any information reasonably required to

enable the Education Authority to identify the relevant education provider. It also enables the Education Authority to share this information with the relevant person. It is not considered that provision is needed for training and further education facilities given that the individual child will be able to provide this information.

- 2.27. This Regulation also enables information to be shared between a designated person (such as a safeguarding lead, designated child protection officer or designated safeguarding officer (or their deputies)) and class teacher, if a child tells either of them about an incident of domestic abuse, and such other information needed to take account of the needs of the child, any impact that the incident may have had on them and to provide support to the child. Separately, provision is also included which allows a designated person to share information received from a relevant person, with a class teacher, for similar purposes.
- 2.28. It is important to note that the Regulation 5 is intended to supplement, not replace, provisions that may already be available to the various persons and bodies captured by the Regulations for the sharing of information. Where these are more appropriate they should continue to be made use of.
- 2.29. Regulation 6 provides that it is an offence for a relevant person (police officer or member of police staff), designated person (such as a safeguarding lead, designated child protection officer or designated safeguarding officer (or their deputies)), class teacher or Education Authority staff dealing with child protection or safeguarding, to disclose without lawful authority any information relating to the purpose of these regulations. It is also an offence for any other person to use or disclose to someone else, any information which they know has been disclosed in contravention of these Regulations.
- 2.30. It is a defence for a person charged with such an offence to show that, at the time of the alleged offence, they believed that the disclosure in question was made with lawful authority and had no reasonable cause to believe otherwise or that they believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.
- 2.31. If found guilty, the maximum penalty on summary conviction (that is in a magistrates' court) is a fine up to the statutory maximum. Where a case is tried on indictment (that is, in the Crown Court) the maximum penalty is a fine (which could be unlimited).
- 2.32. A disclosure of information by a person is made with lawful authority where it is made in the course, and for the purpose, of that person's employment; in accordance with the Regulations; in accordance with any other statutory provision; an order of the court; for the purposes of civil or criminal proceedings (including police investigations); or with the consent of the person to whom the information relates.

3. Background

- 3.1. Section 26 of the 2021 Act enables the Department to bring forward regulations to provide for an 'Operation Encompass' model for Northern Ireland. This is a early intervention partnership enabling support for

children and young people who are experiencing or have witnessed domestic abuse in their household.

4. Consultation

- 4.1. A targeted consultation was undertaken on draft Regulations, including the Information Commissioner's Office as well as education and training providers. 18 responses were received which generally welcomed the regulations.
- 4.2. Consultation was also undertaken on the seven year 'Stopping Domestic and Sexual Violence and Abuse strategy', which made reference to the provision of an Operation Encompass model.

5. Equality Impact

- 5.1. Consideration has been given to compliance with section 75 of the Northern Ireland Act 1998. The Department considers that this matter will not have a differential impact on any of the section 75 categories and, on this basis, the measure was screened out.

6. Regulatory Impact

- 6.1. A regulatory impact assessment was not considered necessary.

7. Financial Implications

- 7.1. Police and education providers specified in the Regulations will meet any implementation costs from within their existing budgetary provision. Where any additional funding is needed this will be bid for.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The proposed legislation is considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. This measure does not replicate, nor is there a requirement to maintain parity with, legislation in other administrations.

11. Additional Information

- 11.1. Not applicable.