

DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Domestic Violence Etc

Section 1: Breach of non-molestation order to be a criminal offence

12. Part 4 of the Family Law Act 1996 empowers a court to make an order giving personal protection to the applicant or relevant child from molestation by an associated person (a non-molestation order). The court can also make a non-molestation order if in any family proceedings to which the respondent is a party it considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no application for an order has been made.
13. Parties to the proceeding may be “associated” by virtue of:
 - marriage or former marriage;
 - cohabitation or former cohabitation;
 - living together or having lived together in the same household other than as employees, tenants, lodgers or boarders;
 - being related;
 - an agreement to marry;
 - being parents or having parental responsibility for a child;
 - being connected by adoption; or
 - being parties to the same family proceedings.
14. Until now, a breach of such an order has been punishable only as a civil contempt of court. Speedy enforcement depended on whether the court attached a power of arrest to the order. If no power of arrest was attached, the victim had to go to the civil court to get an arrest warrant.
15. *Section 1* inserts a new section 42A into the Family Law Act 1996 which makes breach of a non-molestation order a criminal offence. As the maximum penalty for the offence is 5 years’ imprisonment, the offence will be arrestable under section 24(1) of the Police and Criminal Evidence Act 1984. This enables the police always to arrest for breach of a non-molestation order, without the need for the courts to attach a power of arrest, or for the victim to apply to the civil court for an arrest warrant. Under section 42A(2), an individual would only be guilty of a criminal offence if he is aware of the existence of the order. If the victim does not want to pursue criminal proceedings, the option still remains for them to apply for an arrest warrant for breach of a non-molestation order in the civil court.

*These notes refer to the Domestic Violence, Crime and Victims Act
2004 (c.28) which received Royal Assent on 15 November 2004*

16. Subsections (3) and (4) of the new section 42A provide that where an individual has been convicted of a breach of a non-molestation order, he cannot be punished subsequently for contempt, and vice versa.
17. A new sub-section (4A) is inserted into section 42 by paragraph 36 of Schedule 10 which places a duty on the court to consider making a non-molestation order when it considers whether to make an occupation order under Part 4. Occupation orders are orders regulating the occupation of a dwelling-house and may provide for the exclusion of the respondent from the house and the vicinity of the house or prohibit, terminate or restrict the exercise of the respondent's occupation rights. Breach of an occupation order is not to be made a criminal offence as history of violence or molestation is not a prerequisite for the grant of an order. However the new section 42(4A) is designed to ensure that adequate protection is always in place for those persons who need it.