

# **DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2: Criminal Justice**

##### ***Section 12: Restraining orders: England and Wales***

54. This section extends the circumstances in which a restraining order can be made under the Protection from Harassment Act 1997 following criminal proceedings. *Subsection (1)* extends the courts' power to make a restraining order on conviction for any offence, rather than only on conviction for offences under the 1997 Act.
55. Section 2 of the Protection from Harassment Act 1997 created a summary only offence of harassment; section 4 created an offence, triable either summarily or on indictment, that is committed where a person's course of conduct causes another reasonably to fear on at least two occasions that violence will be used against him.
56. *Subsection (2)* provides that when a court is considering making a restraining order after conviction (or acquittal: see paragraph 59 below), the defence and the prosecution may bring any evidence before the court that would be admissible in civil proceedings under section 3 of the Protection from Harassment Act 1997. Section 3 of the Act sets out the procedure for obtaining an injunction to prevent harassment in civil courts.
57. *Subsection (3)* gives any person mentioned in the order the right to make representations to the court when an application is made to vary or discharge the order. This in turn, along with Rules of Court, will ensure that victims are notified of any application to vary or discharge an order. *Subsection (4)* allows a court when dealing with a person for the offence of breach of a restraining order under section 5 of the 1997 Act to vary or discharge the order in question irrespective of whether it was the court that made the original order.
58. *Subsection (5)* introduces a new section, section – 5A – which provides for restraining orders on acquittal. Courts can consider making a restraining order when a person has been acquitted of an offence, where the court believes a restraining order is necessary to protect a person from harassment.
59. Section 5A(2) applies section 5(3) to (7) of the 1997 Act to orders made under this section. Orders can be made for a specified period or until further order and the prosecution, defendant or anyone mentioned in the order can apply for it to be varied or discharged. By virtue of 5(6) it is an offence to do anything prohibited by the order without reasonable excuse. The maximum penalty is 5 years' imprisonment on trial on indictment.
60. Section 5A(3) to (5) provides that an order made on acquittal can be appealed against in the same way as an order made on conviction. Where a conviction is quashed on

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

appeal, the Crown Court will be able to make a restraining order if satisfied that it is necessary to do so to protect any person from harassment.