



Domestic Violence, Crime and Victims Act 2004

2004 CHAPTER 28

PART 2

CRIMINAL JUSTICE

Assault, harassment etc

10 Common assault to be an arrestable offence

- (1) ^{F1}
- (2) ^{F2}

Textual Amendments

- F1** S. 10(1) repealed (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 174(2), 178(8), [Sch. 17 Pt. 2](#); S.I. 2005/3495, art. 2(1)(u)(lviii)
- F2** S. 10(2) repealed (1.3.2007) by [The Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288\) \(N.I. 2\)](#), arts. 1(2), 41(2), [Sch. 2](#)

11 Common assault etc as alternative verdict

In section 6 of the Criminal Law Act 1967 (c. 58) (trial of offences), after subsection (3) (alternative verdicts on trial on indictment) insert—

“(3A) For the purposes of subsection (3) above an offence falls within the jurisdiction of the court of trial if it is an offence to which section 40 of the Criminal Justice Act 1988 applies (power to join in indictment count for common assault etc.), even if a count charging the offence is not included in the indictment.

Changes to legislation: Domestic Violence, Crime and Victims Act 2004, Cross Heading: Assault, harassment etc is up to date with all changes known to be in force on or before 27 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(3B) A person convicted of an offence by virtue of subsection (3A) may only be dealt with for it in a manner in which a magistrates' court could have dealt with him.”

12 Restraining orders: England and Wales

(1) In section 5 of the Protection from Harassment Act 1997 (c. 40) (power to make restraining order where defendant convicted of offence under section 2 or 4 of that Act), in subsection (1) omit “under section 2 or 4”.

^{F3}(2)

^{F3}(3)

^{F3}(4)

(5) After that section insert—

“5A Restraining orders on acquittal

(1) A court before which a person (“the defendant”) is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

(2) Subsections (3) to (7) of section 5 apply to an order under this section as they apply to an order under that one.

(3) Where the Court of Appeal allow an appeal against conviction they may remit the case to the Crown Court to consider whether to proceed under this section.

(4) Where—

(a) the Crown Court allows an appeal against conviction, or

(b) a case is remitted to the Crown Court under subsection (3),

the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

(5) A person made subject to an order under this section has the same right of appeal against the order as if—

(a) he had been convicted of the offence in question before the court which made the order, and

(b) the order had been made under section 5.”

Textual Amendments

F3 S. 12(2)-(4) repealed (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 28](#) (with [ss. 413\(4\)\(5\), 416\(7\), Sch. 27](#)); [S.I. 2020/1236](#), reg. 2 (see also [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), [ss. 1, 5\(2\)\(3\)](#))

13 Restraining orders: Northern Ireland

(1) In Article 7 of the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9)) (power to make restraining order where defendant convicted of offence under Article 4 or 6 of that Order), in paragraph (1) omit “under Article 4 or 6”.

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(2) After paragraph (3) of that Article insert—

“(3A) In proceedings under this Article both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under Article 5.”

(3) After paragraph (4) of that Article insert—

“(4A) Any person mentioned in the order is entitled to be heard on the hearing of an application under paragraph (4).”

(4) After paragraph (6) of that Article insert—

“(7) A court dealing with a person for an offence under this Article may vary or discharge the order in question by a further order.”

(5) After that Article insert—

“7A Restraining orders on acquittal

(1) A court before which a person (“the defendant”) is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

(2) Paragraphs (3) to (7) of Article 7 apply to an order under this Article as they apply to an order under that one.

(3) Where the Court of Appeal allow an appeal against conviction they may remit the case to the Crown Court to consider whether to proceed under this Article.

(4) Where—

(a) a county court allows an appeal against conviction, or

(b) a case is remitted to the Crown Court under paragraph (3),

the reference in paragraph (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

(5) A person made subject to an order under this Article has the same right of appeal against the order as if—

(a) he had been convicted of the offence in question before the court which made the order, and

(b) the order had been made under Article 7.”

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 9 para. 26A inserted by [2015 c. 2 Sch. 3 para. 12](#)