

DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Domestic Violence, Crime and Victims Act 2004 which received Royal Assent on 15 November 2004. They have been prepared by the Home Office in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. Where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. In July 2002 the Government published a White Paper outlining its plans for the criminal justice system, from crime prevention through to the punishment and rehabilitation of offenders. *Justice for All* (Cm 5563) focused on reforms to court procedure and sentencing, to make trials faster and to deliver clear, consistent and appropriate sentencing. At the same time, it set out the Government's proposals to tackle domestic violence, including reform of the civil and criminal law.

4. In June 2003, the Government published a consultation paper, building on the *Justice for All* proposals. *Safety and Justice: the Government's Proposals on Domestic Violence* (Cm 5847) focused on improving the legal and other protection available to victims of domestic violence, particularly reforms to orders under the Family Law Act 1996 (non-molestation and occupation orders) and providing clarity for the police when called to domestic violence incidents.

5. The Act is intended to introduce reform to the civil and criminal law in these areas by criminalising the breach of non-molestation orders under the Family Law Act 1996; by extending the availability of restraining orders under the Protection from Harassment Act 1997; and by making common assault an arrestable offence.

6. The provisions on a new offence of causing or allowing the death of a child or vulnerable adult follow on from the Law Commission proposals in their report published in September 2003 "Children: their non-accidental death or serious injury (criminal trials)" No 282, together with their earlier Consultative Report No 279 and the report by the National Society for the Protection of Children "Which of you did it?", published in autumn 2003. These reports contain a detailed analysis of the problems encountered in the law at present. However, the new offence is designed to protect vulnerable adults as well as children and the approach taken to its formulation is also different in other ways.

7. The provisions in sections 14-16 and section 57 follow consultation on the proposals contained in "Compensation and Support to Victims of Crime" published on January 12 2004.

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

8. The Law Commission Report "The Effective Prosecution of Multiple Offending", Report Number 277, published in October 2002, recommended a two-stage procedure for trying cases involving sample counts whereby only the sample counts would be tried by a jury; Part 2 contains provisions which give effect to that recommendation.

9. A public consultation paper to review the Victim's Charter – which invited comments on some of the ideas now in the proposed Act – was published on 28 February 2001. The White Paper, "Justice for All", published in July 2002, previewed some of the proposed key strands (pp 48-49). This was followed by the policy leaflet "A Better Deal for Victims and Witnesses", presented to the House Library on 21 November 2002, and the publication of the first national strategy for victims and witnesses on 22 July 2003.

10. The Bill is in 4 parts. Part 1 amends the Family Law Act 1996, creates the new offence of causing or allowing the death of a child or vulnerable adult and provides for evidentiary procedures to support it, and sets out arrangements for the establishment and conduct of domestic homicide reviews. Part 2 makes common assault an arrestable offence, makes restraining orders available on conviction or acquittal for any offence, makes provisions for a surcharge, sets out the circumstances in which part of a trial on indictment in the Crown Court may be heard by a judge sitting without a jury, and introduces provisions to improve fine enforcement. Part 3 makes provisions about victims and witnesses of crime and anti-social behaviour and provides powers to enable the Criminal Injuries Compensation Authority to recover from offenders the money it has paid out in compensation to their victims. Part 4 includes supplementary provisions

TERRITORIAL EXTENT

11. The Act generally applies to England and Wales. Sections 5, 9, 17 to 21, and 56 and Schedule 1 apply also to Northern Ireland. Sections 7, 10(2), 13, 23 and 46 apply to Northern Ireland only.

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.

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.

Section 2: Additional considerations if parties are cohabitants or former cohabitants

18. This section repeals section 41 of the Family Law Act 1996, which currently applies where the parties are cohabitants or former cohabitants, and which provides that where the court is required to consider the nature of the parties' relationships it must have regard to the fact that they have not given each other the commitment involved in marriage. This flows from the amendment of the definition of "cohabitants" so as to include same-sex couples (see paragraph 21 below).

19. However, the section also amends section 36 of the Act, which is the only section where the court is specifically required to have regard to the nature of the parties' relationship (although it is also required to have regard to this when considering whether to transfer a tenancy under Schedule 7 to the 1996 Act: see paragraph 5(b)). Section 36 permits the court to make an occupation order in favour of a cohabitant or former cohabitant with no existing right to occupy the property. The amendment provides that when considering the nature of

the parties' relationship the court must take into account in particular the level of commitment involved in that relationship.

Section 3: "Cohabitants" in Part 4 of the Family Law Act 1996 to include same-sex couples

20. Same-sex couples may apply for non-molestation orders by virtue of living together in the same household, but not for occupation orders merely by virtue of being an associated person. They must also have been legally entitled to occupy the dwelling-house and the house must have been intended to be their home. "Legal entitlement" means to occupy the dwelling-house concerned by virtue of a beneficial estate or interest or contract or by virtue of any other enactment giving the right to remain.

21. This section amends the definition of cohabitants to include same-sex cohabitants. This will enable same-sex cohabitants to apply for occupation orders under section 36 and section 38 of the Family Law Act 1996, even where they may not be "legally entitled", to bring their rights into line with the rights of opposite-sex cohabitants. It will also enable them to apply for a non-molestation order by virtue of being a cohabitant, rather than by virtue of being part of the same household as the respondent.

22. *Schedule 10* contains amendments replacing references to "living together" as husband and wife in Part 4 and Schedule 7 to the Act with the term - "cohabit" - to ensure that any reference in Part 4 and Schedule 7 to the Act to living together as husband and wife will encompass both opposite and same-sex cohabitants. The term "former cohabitant" is also amended to include former same-sex cohabitants.

Section 4: Extension of Part 4 of 1996 Act to non-cohabiting couples

23. This section extends the availability of non-molestation orders to those in domestic relationships who have never cohabited or have never been married. This new category of associated person will also be able to apply for an occupation order under section 33 of the Act as long as the requirements of section 33(1) are met. As section 33 only applies to homes in which the applicant and respondent have lived or intended to live, it is unlikely that this new category of associated person will be able to satisfy this requirement very often.

24. It extends the list of associated persons by incorporating a reference to those who have or have had an intimate personal relationship which is or was of significant duration. It will be for the court to decide on whether the relationship meets these criteria. This covers a long-standing relationship which may, or may not, be a sexual relationship, but which is an intimate and personal one. It does not include long-term platonic friends or "one-night stands".

Section 5: Causing or allowing the death of a child or vulnerable adult: the offence

25. *Subsection (1)* sets out the circumstances under which a person is guilty of an offence of causing or allowing the death of a child or a vulnerable adult. It limits the offence to where the victim has died of an unlawful act, so it will not apply where the death was an accident, or where for example a child may have suffered a cot death. The offence only applies to members of the household who had frequent contact with the victim, and could therefore be reasonably expected both to be aware of any risk to the victim, and to have a duty to protect him from harm.

26. The household member must have failed to take reasonable steps to protect the

victim. What will constitute “reasonable steps” will depend on the circumstances of the person and their relationship to the victim.

27. The victim must also have been at significant risk of serious physical harm. The risk is likely to be demonstrated by a history of violence towards the vulnerable person, or towards others in the household. The offence will not apply if the victim died of a single blow when there was no previous history of abuse, nor any reason to suspect a risk. Where there is no reason to suspect the victim is at risk, other members of the household cannot reasonably be expected to have taken steps to prevent the abuse. They will therefore not be guilty of the new offence, even where it is clear that one of them is guilty of a homicide offence.

28. The effect of *subsection (2)* is that where, for example, there are two defendants and it is established that one must have caused the death and the other must have failed to take reasonable steps to prevent it, the prosecution does not have to prove which is which.

29. *Subsection (3)* provides that only those who are 16 or over may be guilty of the offence, unless they are the mother or father of the victim. Members of the household under 16 will not have a duty of care or be expected to take steps to prevent a victim coming to harm. In particular, a child under 16 will have no duty to prevent their parents from harming a sibling. The parents of a child will be expected to take reasonable steps to protect their child even if they themselves are under 16.

30. *Subsection (4)(a)* provides that a person who visits the household frequently and for long periods can be regarded as a member of the household for these purposes. This will apply whatever the formal relationship of the person to the victim. *Subsection (4)(b)* covers situations where the victim might have lived in different households at different times. Only the members of the household where the victim suffered fatal harm could be guilty of the offence.

31. *Subsection (5)* makes it clear that a defendant can be charged with failing to take reasonable steps to protect the victim, even where the victim died as a result of the act of person who lacks criminal responsibility. There is a safeguard to ensure that a person who lacks criminal responsibility cannot be charged with the criminal act of causing the death by virtue of the definition in this section if he could not otherwise be charged with an offence.

32. *Subsection (6)* provides further definitions for the purposes of the section.

Section 6: Evidence and procedure: England and Wales

33. *Section 6* applies to trials in England and Wales only. It provides special rules for cases where a defendant is charged within the same proceedings with the new offence under section 5 and also with murder or manslaughter in relation to the same death. The provisions in *subsections (2) to (4)* apply in circumstances where this is the case.

34. *Subsection (2)* makes provision for drawing such inferences as appear proper from a defendant’s failure to give evidence in court (or refusal, without good cause, to answer any question). Where the court or jury is permitted under section 35(3) of the Criminal Justice and Public Order Act 1994 to draw an adverse inference in respect of the offence under section 5 from the defendant’s failure to give evidence or to answer questions, the subsection provides that an adverse inference may also be drawn in relation to the charge of murder or manslaughter. The subsection makes clear that an adverse inference can be drawn in relation to the murder or manslaughter charge even where there would not otherwise be a case to

answer on that charge. However, a court or jury may only draw an adverse inference if to do so would be proper given all the circumstances of the case.

35. The entitlement under this section to draw an adverse inference in respect of the charge of murder or manslaughter is subject to the safeguard in section 38(3) of the 1994 Act. This, read with the *Murray v UK* case in the European Court of Human Rights ([1996] 22 EHRR 29), has the effect that a defendant may not be convicted solely or mainly on the basis of an inference drawn from his or her silence or refusal to answer questions.

36. *Subsection (3)* sets out how charges should be dealt with where a person is sent by a magistrates' court to the Crown Court for trial (pursuant to section 51 of the Crime and Disorder Act 1998), and the defence makes an application for the charges to be dismissed (under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998). This subsection prevents the murder or manslaughter charge being dismissed if the judge does not dismiss the section 5 offence charge.

37. *Subsection (4)* defers the decision on a question of whether there is a "case to answer" on the charge of murder or manslaughter until the close of the defence case, unless the prosecution fails to establish a case to answer on the section 5 offence charge by the conclusion of its case. This means that, in these cases, the court will hear all the evidence that is to be presented in the case before deciding whether the charges can safely be left to the jury.

38. *Subsection (5)* makes clear that the new offence should be treated as an offence of homicide for the purposes of the following enactments:

- Sections 24 and 25 of the Magistrates' Courts Act 1980
- Section 51 A of the Crime and Disorder Act 1998
- Section 8 of the Powers of Criminal Courts (Sentencing) Act 2000

39. Treating the offence as a homicide for the purposes of sections 24 and 25 of the Magistrates' Courts Act 1980 and section 51 of the Crime and Disorder Act 1998 means that the offence will always be tried in the Crown Court, even where the defendant is a juvenile. Including the offence as a homicide for the purposes of section 8 of the Powers of Criminal Courts (Sentencing) Act 2000 means that the offender can be sentenced in the Crown Court even if he or she is under 18.

Section 7: Evidence and procedure: Northern Ireland

40. *Section 7* provides special rules for trials in Northern Ireland equivalent to those for England and Wales provided in section 6. The provisions in subsections (2) to (4) apply in circumstances where a defendant is charged within the same proceedings with the new offence under section 5 and also with murder or manslaughter in relation to the same death.

41. The effect of *subsection (2)* is to provide for Northern Ireland what section 6(2) provides for England and Wales: where the court or jury is permitted under Article 4(4) of the Criminal Evidence (Northern Ireland) Order 1988 to draw an inference of guilt in respect of the offence under section 5 from the defendant's failure to give evidence, the subsection provides that an adverse inference may also be drawn in relation to the charge of murder or manslaughter. The effect of this provision is as set out for England and Wales above.

42. *Subsection (3)* sets out how magistrates' courts should deal with the charge of murder or manslaughter when they consider, under Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981, whether to commit the defendant for trial for that offence. This subsection provides that there will automatically be deemed sufficient evidence to put the person on trial for murder or manslaughter if there is found to be sufficient evidence to put him or her on trial for the section 5 offence.

43. The effect of *subsection (4)* is to provide for Northern Ireland *what section 6(4)* provides for England and Wales (see paragraph 37).

44. *Subsection (5)* makes clear that the new offence should be treated as an offence of homicide for the purposes of Articles 17 and 32 of the Criminal Justice (Children) (Northern Ireland) Order 1998. Treating the offence as a homicide for the purposes of Article 17 means that the offence will always be tried in the Crown Court, even where the defendant is a juvenile. Including the offence as a homicide for the purposes of Article 32 means that the offender can be sentenced in the Crown Court even if he or she is under 18. These provisions are considered to be justified by the seriousness of the offence.

Section 8: Evidence and procedure: courts martial

45. This section enables the special rules provided in section 6 to apply to proceedings before courts-martial where the defendant is charged within the same proceedings with the military offences corresponding to those referred to in section 6 in relation to the same death.

Section 9: Establishment and conduct of reviews

46. This section provides for guidance on the establishment and conduct of domestic homicide reviews, so that statutory and other agencies can learn lessons from them. Under *subsection (3)*, the relevant authorities have a duty to have regard to guidance issued by the Secretary of State when establishing or conducting such a review. The relevant authorities are listed in *subsection (4)(a)* for England and Wales as chief officer of police, local authorities, local probation boards, Strategic Health Authorities, Primary Care Trusts, Local Health Boards and NHS trusts and in *subsection (4)(b)* for Northern Ireland, as the Chief Constable of the Police Service of Northern Ireland, the Probation Board for Northern Ireland, Health and Social Services Boards and Health and Social Services Trusts.

47. It is envisaged that the guidance will encourage multi-agency reviews in relevant cases and will provide details as to leadership, format, timing and participants depending on the individual circumstances of the case.

48. The reviews are limited to deaths of those aged 16 years and above. Child deaths are already considered under Part 8 of the Serious Case Reviews ("Working Together to Safeguard Children") guidance. The guidance will cover deaths which have or appear to have resulted from violence, abuse or neglect inflicted by someone to whom he was related or of the same household or with whom the victim had an intimate personal relationship.

49. In addition, *subsection (2)* gives the Secretary of State the reserve power to direct a review to be established in a particular case, specifying who must establish and/or participate in such a review. *Subsection (6)* enables the Secretary of State to amend the definition of relevant authorities in *subsection (4)* and "local authority" in *subsection (5)* by order subject to the negative resolution procedure (see section 61(3)).

PART 2: CRIMINAL JUSTICE

Section 10: common assault to be an arrestable offence

50. *Subsection (1)* extends the list of arrestable offences in England and Wales by adding the offence of common assault to Schedule 1A to the Police and Criminal Evidence Act 1984.

51. The effect is to give the police the power to arrest an individual on suspicion of assault and/or battery without an arrest warrant.

52. *Subsection (2)* extends the list of arrestable offences for Northern Ireland by adding the offence of common assault to Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989.

Section 11: Common assault etc as alternative verdict

53. *Section 9* enables an alternative verdict to be returned under section 6(3) of the Criminal Law Act 1967 in respect of common assault and the other summary offences listed in subsection (3) of section 40 of the Criminal Justice Act 1988.

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 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.

Section 13: Restraining Orders: Northern Ireland

61. This section extends for Northern Ireland the circumstances in which a restraining order can be made under the Protection from Harassment (Northern Ireland) Order 1997 following criminal proceedings, in line with the equivalent provisions for England and Wales.

Section 14: Surcharge payable on conviction

62. This section provides for a surcharge to be payable on conviction by inserting two new sections, section 161A and section 161B, in the Criminal Justice Act 2003.

63. Subsection (1) of section 161A imposes a duty on the court to order payment of a surcharge, except when the court makes an absolute discharge or mental health disposal, (subsection (4)), or where the case is of a type prescribed by the Secretary of State in an order under subsection (2). The intention is that the power in subsection (2) to make such an order would be used if the operation of the provisions were to show that some categories of defendant were being unfairly penalised by the surcharge.

64. Subsection (3) of section 161A deals with the relationship between the surcharge and a compensation order. The court is required to give priority to a compensation order as subsection (3) provides that if the court considers that the offender should pay compensation but has insufficient means to pay the surcharge as well, it must reduce the surcharge accordingly.

65. Section 161B provides for the Secretary of State to set the amount of the surcharge by order. *Subsection (2) of section 14* amends the provisions in section 164 of the Criminal Justice Act 2003 on fixing of fines to ensure that the court does not reduce a fine on account of the surcharge unless the person has insufficient means to pay both. *Subsection (3)* ensures that the surcharge will be treated as a fine for the purposes of collection and enforcement.

66. *Subsection (4)* provides that the provisions in the Courts Act 2003 on the collection and enforcement of fines will apply. *Subsection (5)* provides that the Secretary of State may by order amend the way in which the relevant provisions of the Courts Act apply to the surcharge.

Section 15: Increase in maximum on-the-spot penalty for disorderly behaviour

67. *Section 15* amends section 3 of the Criminal Justice and Police Act 2001 to increase the maximum amount of on-the-spot penalties for disorderly behaviour. This ensures that the amount of the penalty representing the surcharge is taken into account by changing the maximum amount that can be prescribed as a penalty for disorderly behaviour from a quarter of the maximum fine to one quarter of the maximum fine plus one half of the surcharge payable.

Section 16: Higher fixed penalty for repeated road traffic offences

68. *Subsections (1) and (2)* amend section 53 of the Road Traffic Offenders Act 1988 to

enable a higher fixed penalty to be provided for, in an order under section 53, where a person already has points on his licence or has been disqualified from driving in the past three years.

69. *Subsection (3)* amends section 84 of the Road Traffic Offenders Act 1998 so that regulations can be made dealing with the situation where a conditional offer has been made of a fixed penalty notice, and the driver is subsequently identified as a person to whom in fact a higher fixed penalty applied under section 53(3) because he is a person who within the past three years had points on his licence or was disqualified from driving. It allows the fixed penalty clerk to issue a separate notice requiring the offender to pay the extra amount.

Section 17: Application by prosecution for certain counts to be tried without a jury

70. This section makes provision for the prosecution to apply for part of a trial on indictment in the Crown Court to proceed in the absence of a jury. A successful application would need to satisfy the Court of three conditions.

71. The first condition is that there are so many counts in the indictment that a trial by jury involving all of those counts would be impracticable (*subsection (3)*).

72. The second condition (*subsection (4)*) is that the court considers that those counts which would be able to be tried with a jury can be regarded as samples of other counts in the indictment, which could accordingly be tried without a jury. For this purpose, a count may not be regarded as a sample of other counts unless the defendant in respect of each count is the same person (*subsection (9)*).

73. The third condition is that it is in the interests of justice for part of the trial to proceed in the absence of a jury (*subsection (5)*).

74. In deciding whether to make an order for part of the trial to proceed in the absence of a jury, the judge will also be required to consider whether there is anything that could reasonably be done to facilitate a jury trial of all of the counts. However, in doing so the judge is not to regard as reasonable any measure which might lead to the possibility of a defendant in the trial receiving a lesser sentence than would be the case if that step were not taken.

Section 18: Procedure for applications under section 17

75. This section prescribes the procedure for determining applications for part of a trial to proceed in the absence of a jury under *section 17*. This provision is likely to be supplemented by rules of court. According to *section 20*, rules of court may make provisions which are necessary or expedient for the purposes of *sections 17 to 19*. *Section 18* makes clear that any such application will be determined at a preparatory hearing that has been ordered (whether particularly for that purpose or not) under the relevant provisions in the Criminal Justice Act 1987 and the Criminal Procedure and Investigations Act 1996. The parties to the preparatory hearing must also be given the opportunity to make representations with respect to the application.

76. The effect of *subsection (5)* is that an appeal will lie to the Court of Appeal for both prosecution and defendant against the determination made by the court at a preparatory hearing on any application for part of a trial to take place without jury under *section 17*.

Section 19: Effect of order under section 17(2)

77. *Subsection (1)* provides that if, in a case where an order under section 17 has been

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made, the defendant is found guilty by the jury of a sample count, the counts of which it is a sample may be tried without jury.

78. *Subsection (2)* provides that where a court orders part of a trial to be conducted without a jury under *section 17(2)*, the trial will proceed in the usual way, except that the functions which would otherwise have been performed by a jury will be performed by the judge sitting alone; and *subsection (3)* provides for references to the jury in other enactments to be interpreted as references to the court.

79. Where part of a trial is conducted without a jury, and a defendant is convicted, *subsection (4)(a)* requires the court to give its reasons for the conviction.

80. *Subsections (5) and (6)* provide that the time limits governing applications for leave to appeal to the Court of Appeal against conviction in cases where part of the trial is conducted without a jury will begin to run from the end of the proceedings, and not from the end of the part of the trial which is tried with a jury.

81. *Subsection (7)* disapplies these provisions in respect of hearings under section 4A of the Criminal Procedure (Insanity) Act 1964.

Section 20: Rules of court

82. This section makes clear that rules of court may be made governing the procedure to be followed, and the time limits which will apply, in respect of applications under *section 17*.

Section 21: Applications of sections 17 to 20 to Northern Ireland

83. This section provides that in their application to Northern Ireland *sections 17 to 20* have effect subject to the modifications in *Schedule 1*. Under *Section 18(1)* (as modified by *Schedule 1*), an application under *Section 17* must be determined at a preparatory hearing within the meaning of the Criminal Justice (Serious Fraud)(Northern Ireland) Order 1988 (this is the Northern Ireland equivalent of a preparatory hearing under the Criminal Justice Act 1987) or a hearing specified in, or for which provision is made by Crown Court rules. The reference to Crown Court rules is necessary as Part III of the Criminal Procedure and Investigations Act 1996 (“the 1996 Act”) does not extend to Northern Ireland.

84. *Section 18A* (as substituted by *Schedule 1*) makes provision for appeals in respect of hearings under Crown Court rules. *Section 18B* (as substituted by *Schedule 1*), which deals with reporting restrictions, applies sections 41 and 42 of the 1996 Act to hearings and appeals under Crown Court rules.

85. *Subsection (2)* provides that sections 17 to 20 do not apply in relation to trials to which section 75 of the Terrorism Act 2000 applies. Section 75 applies only to Northern Ireland and provides for mode of trial on indictment of scheduled offences to be a court sitting without a jury. These are commonly known as “Diplock Courts” after the Diplock Commission which found that the jury system as a means of trying terrorist crime was under strain and highlighted the danger of perverse acquittals or intimidation of jurors. Scheduled offences are defined in section 65 of and Schedule 9 to the Terrorism Act 2000 as being offences which qualify for special treatment because they are terrorist offences related to the special situation in Northern Ireland.

Section 22: Procedure for determining fitness to plead: England and Wales

86. *Section 22* amends section 4 of the Criminal Procedure (Insanity) Act 1964 to provide

that the judge, rather than the jury, determines the issue of whether a defendant is fit to plead.

Section 23: Procedure for determining fitness to plead: Northern Ireland

87. *Section 23* amends the Mental Health (Northern Ireland) Order 1986 to achieve the same effect for Northern Ireland as in *section 22*.

Section 24: Powers of court on finding of insanity or unfitness to plead etc.

88. *Section 24* provides a new range of disposals for the court when it has made a finding of unfitness to plead and that the defendant did the act charged or has found the defendant not guilty by reason of insanity under the Criminal Procedure (Insanity) Act 1964. They allow for the defendant to receive treatment and support if the court thinks that this is appropriate.

89. *Subsection (1)* substitutes a new section 5 and inserts a new section 5A of the Criminal Procedure (Insanity) Act 1964. The new section 5 sets out the court's options on a finding of unfitness or insanity. The court has three options. The first option is to make a hospital order under section 37 of the Mental Health Act 1983 (which can also be accompanied by a restriction order under section 41 of that Act). The second option is to make a supervision order and the third option is to order the defendant's absolute discharge.

90. If the court wishes the defendant to be detained in hospital, the appropriate order will be a hospital order. To make a hospital order, the court must have the evidence required by the 1983 Act: that the defendant is mentally disordered and requires specialist medical treatment. This means that there must be medical evidence that justifies his detention on grounds of his mental state. The making of a restriction order alongside a hospital order gives the Secretary of State certain powers in relation to the management of the defendant in hospital, such as the requirement that the Secretary of State consent to the defendant being given leave or discharged. Restriction orders are made in cases where the defendant poses a risk to the public (see section 41(1) of the 1983 Act). The power of the court to make a hospital order and a restriction order under the 1983 Act represents a change from the current position, whereby the court makes an order for the defendant's admission to hospital under Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, without any requirement to hear medical evidence, and specifies whether it thinks restrictions are appropriate. Once the court has made an admission order, the Secretary of State has two months to issue a warrant for the defendant's admission to hospital. The defendant is then treated for the purposes of his management in hospital as if he had been given a hospital order (and if appropriate a restriction order) under the 1983 Act.

91. The two principal differences under the new system will be that the Secretary of State no longer has a role in deciding whether or not the defendant is admitted to hospital and that a court can no longer order the defendant's admission to a psychiatric hospital without any medical evidence.

92. Existing provision in section 5(3) of the 1964 Act and paragraph 2(2) of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 requires the court to admit the defendant to hospital subject to restrictions where he was charged with an offence for which the sentence is fixed by law (i.e. murder). The new section 5 does the same but the court is only obliged to make a hospital order with a restriction order on a charge of murder if the conditions for making a hospital order are met. If the conditions are not met, for example if the reason for the finding of unfitness to plead related to a physical disorder, the court has

the option of making one of the other orders.

93. The new section 5A makes provision about the detail of these orders. Subsections (1) and (3) of new section 5A modify the 1983 Act so that the provisions on hospital orders (which are normally given after conviction of an offence) apply equally to those given a hospital order following a finding of unfitness or insanity. The one difference is that a court will be able to require a hospital to admit a person found unfit to plead or not guilty by reason of insanity, whereas it has no such power in respect of those convicted of an offence.

94. Subsection (2) of new section 5A extends the powers under the 1983 Act to remand an accused person to hospital for a report or treatment and to make an interim hospital order so that the court can exercise these powers where a person has been found unfit to plead or not guilty by reason of insanity and the court is considering which disposal would be appropriate.

95. Subsection (4) of new section 5A replicates existing provision in paragraph 4 of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 and allows the Secretary of State to remit for trial a person who is found unfit to plead and given a hospital order with a restriction order and who subsequently recovers.

96. Subsection (5) of new section 5A introduces a new Schedule 1A to the 1964 Act, which makes provision about the supervision order. The new Schedule 1A is inserted by *subsection (2) of section 24* and *Schedule 2* to the Act. The supervision order will replace the existing supervision and treatment order, provision for which is made in Schedule 2 to the 1991 Act. The new supervision order differs from the old supervision and treatment order in that it enables treatment to be given under supervision for physical as well as mental disorder and in that it cannot include a requirement for a person to receive treatment as an in-patient. It is designed to enable support and treatment to be given to the defendant to prevent recurrence of the problem which led to the offending. There is no sanction for breach of either the new supervision order or the existing supervision and treatment order; the orders simply provide a framework for treatment.

97. Subsection (6) of new section 5A applies the provision on absolute discharge in section 12 the Powers of Criminal Courts (Sentencing) Act 2000 to the case where a defendant is given an absolute discharge following a finding of unfitness or insanity.

98. *Subsection (3) of section 24* makes the same changes to the disposals available to the Court of Appeal when substituting a finding of insanity or unfitness to plead for another finding. *Subsection (4) of section 24* removes the power of the Court of Appeal to order a person's admission to hospital where it substitutes a verdict of acquittal for a verdict of not guilty by reason of insanity and there is medical evidence that the person is mentally disordered. It will still be possible to admit such a person to hospital under the civil powers in the 1983 Act.

99. *Subsection (5) of Section 24* repeals the provisions of the 1964 and 1991 Acts which are being replaced.

Section 25: Appeal against order made on finding of insanity or unfitness to plead etc

100. This section inserts new sections 16A and 16B into the Criminal Appeal Act 1968. The new section 16A provides a right of appeal to the Court of Appeal against a supervision order or hospital order made by virtue of *section 24*. New section 16B enables the Court of

Appeal to quash those orders and substitute or amend them in any way available to the court below.

Section 26: court-martial provisions

101. This section introduces *Schedule 3*. *Schedule 3* substitutes new provisions for sections 116 of the Army Act 1955 and the Air Force Act 1955, and for section 63 of the Naval Discipline Act 1957. It also amends the Courts-Martial (Appeals) Act 1968 by substituting new sections 16, 23, and 25, inserting new sections 25A and 25B, and making other amendments. *Schedule 3* replaces schedule 2 to the Armed Forces Act 1996, which has never been commenced.

102. The purpose of the amendments in *Schedule 3* is to reflect in the procedure of courts-martial and the Courts-Martial Appeal Court the changes made to civilian court procedure by sections 22, 24 and 25.

Section 27: Powers of authorised officers executing warrants

103. This section inserts a new section 125BA into the Magistrates' Courts Act 1980, which provides for a new Schedule 4A (set out at *Schedule 4* to the Act). The new section and Schedule extend the powers of civilian enforcement officers and approved enforcement agencies when executing warrants issued by magistrates' courts in criminal proceedings. These authorised officers will have the power to enter premises in order to search for a person who is the subject of a warrant, or in order to seize goods in satisfaction of an unpaid fine. Where they take a person into custody they will have the power to search him for items that might be used to cause physical injury or to facilitate an escape. Authorised officers will be entitled to use reasonable force in exercising these powers. The powers are to be exercised only so far as it is reasonable to do so. They are intended to be equivalent to the powers available to a police officer when executing a warrant of arrest.

Section 28: Disclosure orders for purpose of executing warrants

104. This section inserts new sections 125CA and 125CB into the Magistrates' Courts Act 1980. New section 125CA provides for the making by magistrates' courts of disclosure orders where necessary for the purpose of executing warrants in connection with the enforcement of fines and community sentences. A disclosure order will be made on application to the court by a person entitled to execute the warrant (typically a civilian enforcement officer or approved enforcement agency). The disclosure order will require a third party to supply to the court specified information about the offender who is the subject of the warrant. The information will be that needed to establish the whereabouts of the offender so that the warrant can be executed; namely the offender's name, date of birth, national insurance number and address. New section 125CB provides for the legitimate dissemination of information obtained under a disclosure order in order to execute the warrant, and makes unauthorised disclosure of such information an offence.

Section 29: Procedure on breach of community penalty etc

105. This section introduces *Schedule 5*, which amends those provisions of the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003 that dictate the location of the magistrates' court where proceedings for breach of a community penalty must be taken. The existing provisions have the effect of restricting such proceedings to a court in a single petty sessions area in each individual case. Where the offender has moved away from

that area, the cost and inconvenience of transporting him to court on arrest can be considerable. The purpose of the amendments is to ensure, so far as possible, that breach proceedings are taken in a court in the area where the offender is living at the time of the breach.

106. Each of paragraphs 2 to 8 of *Schedule 5* applies to a different type of community sentence. In each case the amendments have two effects. Firstly, a summons or warrant to secure the attendance of an offender who is in breach of the community sentence can be issued by any magistrates' court. Secondly, such a summons or warrant will direct the offender to attend or be brought before a court in the area where he lives, if this is known. If his place of residence is unknown then the summons or warrant will direct the offender to attend a court in the area that would previously have been specified had the amendments not been made.

107. Paragraph 9 of *Schedule 5* amends Schedule 13 to the Criminal Justice Act 2003, disapplying the other amendments in the case of a breach of a suspended sentence order that has been transferred to Scotland or Northern Ireland. This amendment is required because of the particular wording of Schedule 13 to the 2003 Act; the same result is achieved in respect of the other types of community sentence without express provision.

108. Paragraph 10 of *Schedule 5* extends the amending power conferred by section 109(5)(b) of the Courts Act 2003 to ensure that *Schedule 5* continues to have effect after section 8 of that Act comes into force, replacing petty sessions areas with local justice areas.

Section 30: Prosecution appeals

109. *Section 30* makes an amendment to section 58(13) of the Criminal Justice Act 2003 to ensure that the prosecution appeals provisions in Part 9 of that Act are available, as it was intended they should be, in cases tried without a jury under Part 7 of that Act. The existing definition in section 58(13) of the point beyond which the prosecution's right of appeals cannot be exercised is inappropriate where there is no jury. (Paragraph 62 of Schedule 10 to the Act inserts into the Criminal Justice Act 2003 an order-making power allowing appropriate modifications to be made to Part 9 of that Act to take into account two-stage trials under *section 17*.)

Section 31: Intermittent custody

110. The provisions of *section 31* and *Schedule 6* ensure that those serving a sentence of intermittent custody become eligible for home detention curfew at an equivalent point in their sentence to those serving a sentence of custody plus. *Schedule 6* also inserts a new section 264A which makes separate provision for those serving consecutive sentences of intermittent custody. As before, its effect is to ensure equivalence between the sentences of intermittent custody and custody plus.

PART 3: VICTIMS ETC

Section 32: Codes of practice for victims

111. *Section 32* places a requirement on the Secretary of State in consultation (under *section 33*) with the Attorney General and the Lord Chancellor (the Cabinet Ministers who share responsibility for the criminal justice system) to issue a Code of Practice in respect of the services provided to victims of crime by persons who have functions relating to victims or

the criminal justice system as a whole.

112. *Subsections (2)- (4)* allow the code, among other things, to:

- differentiate between different types of victims, so that particularly vulnerable victims, for example, might receive a faster service or a service tailored to their needs;
- benefit persons other than the victim, such as the relatives of deceased victims or parents of juveniles;
- allow for regional variations in the way that services are provided to victims so that the code can reflect local practices.

113. *Subsection (5)* provides that the code may not require anything to be done by a person acting in a judicial capacity or by a member of the Crown Prosecution Service when exercising a discretion.

114. *Subsection (6)* provides that a person can be a victim of criminal conduct for the purposes of this Section, irrespective of whether or not an offender is charged or convicted. This ensures that the provisions of the code can be broad enough to require the provision of services to victims at all stages of the criminal justice system and to victims of offences in respect of which no criminal proceedings are eventually brought or where criminal proceedings result in a not-guilty verdict.

Section 33: Procedure

115. *Section 33* explains the procedure for drafting and issuing the code of practice and subsequent revisions of it. When the final version of the code has been laid before Parliament, it is brought into operation by order. By virtue of *section 61(3)*, the order is to be subject to the negative resolution procedure. By virtue of *subsection (9)*, the code may not be revised so as to reduce the quality or extent of services provided.

Section 34: Effect of non-compliance

116. *Section 34* provides that failure to comply with the code does not, in itself, give rise to any liability to criminal or civil proceedings.

Section 35: Victims rights to make representation and receive information

117. *Section 35* replaces section 69 of the Criminal Justice and Court Services Act 2000. It provides that where the court convicts a person (the “offender”) for a sexual or violent offence and imposes a prison sentence of a minimum of 12 months or sentence of detention, the local probation board must take reasonable steps to establish whether the victim of the offence wishes to make representations about whether the offender should be subject to conditions on release (and if so, what conditions), or wishes to receive information about those conditions. If the victim does express such a wish, the relevant local probation board becomes responsible for forwarding any representations the victim makes to the authority responsible for decisions on release. The board would also be responsible for informing the victim whether the offender will be subject to any conditions in the event of release; for providing details of any conditions about contact with the victim or his family, and for providing any other information it considers appropriate. The section defines the relevant local probation board as the board of which the supervising officer of the offender after release (if there is one) is an officer or the board for the area in which the offender is

detained.

Sections 36 - 44

118. These sections make provision for local probation boards to provide similar information (obtained from the Secretary of State and Mental Health Review Tribunal) to victims of persons subject to the Mental Health Act 1983. They also make similar provision for such victims to make.

Hospital orders

Section 36: Victims' rights: preliminary

119. *Section 36* applies where the court convicts a person ("the patient") for a sexual or violent offence or makes a finding of insanity or unfitness to plead and then makes a hospital order with restrictions in respect of that patient. The local probation board must take reasonable steps to establish, as in *section 35*, if the victim of the offence wishes to make representations as to whether the patient should be subject to conditions in the event of the his discharge from hospital. The board must also establish whether the victim wishes to receive information about those conditions in the event of his discharge.

Section 37: Representations

120. *Section 37* follows on from *section 36* and requires the board to forward the victim's representations to the authority making decisions on discharge. The Home Secretary is required to inform the board if he is considering lifting the restrictions, discharging the patient (and if so whether that is subject to conditions) or varying conditions of discharge. A Mental Health Review Tribunal is required to inform the board of applications or references of the patient's case which may lead to discharge or variation of conditions. The board is then required to pass any information so received to a victim who has expressed a wish to make representations so that he may do so. The board must also pass that information to a victim who, regardless of whether he expressed a wish to or not has, in fact, made representations on the matters described in *section 36*.

Section 38: Information

121. *Section 38* also follows on from *section 36* and requires the board to inform a victim who has requested to receive information specified in that section whether the patient is to be subject to conditions in the event of his discharge; and, if so, to inform him of any conditions relating to contact with the victim or his family. It also requires the board to inform him of the date (if any) on which the restrictions will cease and to give him any other information it considers appropriate.

122. So that the board is in a position to comply with these obligations, the Home Secretary is required to inform it if he is going to discharge the patient. He must also give the board information regarding any conditions of discharge, or recall to hospital or when restrictions will end if he uses his power to lift them. Similarly, if there is an application or reference to a Mental Health Review Tribunal, the tribunal is required to inform the board if the patient is to be discharged. It must also give the board information regarding any conditions of discharge and the date on which restrictions will end if the tribunal grants an absolute discharge.

Hospital direction

Section 39: Victims' rights: preliminary

123. *Section 39* applies instead of *section 35* by virtue of *section 35(2)* where the sentencing court makes a hospital direction and limitation direction in respect of an offender in addition to giving him a relevant prison sentence. The local probation board has the same responsibility to take reasonable steps to establish whether the victim of the offence wishes to make representations, broadly, about whether the offender should be subject to conditions or supervision requirements in the event of his discharge or release from hospital or prison (and if so what conditions or requirements). The board must also establish whether the victim wishes to receive information about the conditions or requirements to which the offender is to be subject in the event of his release or discharge.

Section 40: Representations

124. *Section 40* follows on from *section 39* and requires the board to forward the victim's representations to the relevant authority taking decisions on discharge, in the event that the offender is discharged under the powers in the Mental Health Act 1983. The Home Secretary is required to inform the board if he is considering lifting restrictions, discharging the offender under the 1983 Act powers or varying conditions of discharge. A Mental Health Review Tribunal is required to inform the board if it receives an application or reference in respect of the offender's discharge. The board must then pass any information so received to a victim who has expressed a wish to make representations so that he may do so. The board must also pass that information to a victim who, regardless of whether he expressed a wish to or not, has in fact made representations on the matters described in *section 40*.

Section 41: Information

125. *Section 41* also follows on from *section 39* and requires the board to inform a victim who has so requested to receive information specified in that section, whether the offender is to be subject to conditions in the event that he is discharged under the powers in the Mental Health Act 1983, and if so, to provide details of any such conditions relating to contact with the victim or his family. It also requires the board to notify him of the date on which any restrictions will cease to have effect. The board is also required to inform the victim if the offender is to be subject to any licence conditions or supervision requirements in the event of his release and to inform him of any such conditions or requirements which relate to contact with him or his family. In addition the board should provide the victim with any other information it considers appropriate.

126. So that the board is in a position to comply with these obligations, the Home Secretary must inform the board if he is considering discharging the offender under the 1983 Act powers. He must also give the board information regarding any conditions of discharge or recall to hospital, and the date on which restrictions will cease to have effect if he is lifting them.

127. If an application or reference is made to a Mental Health Review Tribunal it must inform the board if it is going to discharge the offender under the 1983 Act powers; it must also give the board information regarding conditions of discharge and when restrictions will cease if the tribunal grants an absolute discharge.

Transfer directions

Section 42: Victims' rights: preliminary

128. *Section 42* applies if an offender (defined in the same terms as in *section 35*) is transferred by the Home Secretary to hospital and restrictions are imposed, under the powers in the Mental Health Act 1983. The board for the area where the hospital is situated is required to take reasonable steps to establish whether a victim of the offence wishes to make representations or receive information about any conditions which may apply in the event of discharge from hospital under the 1983 Act powers.

Section 43: Representations

129. *Section 43* follows on from *section 42* and requires the board to forward the victim's representations to the relevant authority taking decisions on discharge in the event that the offender is discharged under the powers in the Mental Health Act 1983. The Home Secretary is required to inform the board if he is considering lifting restrictions, discharging the offender (either absolutely or subject to conditions) or varying conditions of discharge. A Mental Health Review Tribunal is required to inform the board if it receives an application or reference in respect of the offender's discharge. The board must then pass any information so received to a victim who has expressed a wish to make representations so that he may do so. The board must also pass that information to a victim who, regardless of whether or not he expressed a wish to or not, has in fact made representations on the matters described in *section 42*.

Section 44: Information

130. *Section 44* also follows on from *section 42* and requires the board to inform the victim who has requested to receive information specified in that section whether the offender is to be subject to conditions in the event that he is discharged under the powers in the Mental Health Act 1983, and if so, to provide details of any conditions relating to contact with the victim and his family. It also requires the board to notify the victim of the date on which restrictions will cease, and to give any other information the board considers appropriate.

131. So that the board is in a position to comply with these obligations, the Home Secretary is required to inform it if he is considering discharging the offender under powers in the Mental Health Act 1983. He must also give information to the board regarding any conditions of discharge, any recall to hospital and the date on which restrictions will cease to have effect if he is lifting them.

132. Similarly, if an application or reference is made to a Mental Health Review Tribunal, the tribunal must inform the board if it is going to discharge the offender under the 1983 Act powers. It must also give information to the board regarding any conditions of discharge and when restrictions will cease if the tribunal grants an absolute discharge.

Section 45: Interpretation: sections 35 to 44

133. *Section 45* provides definitions of the expressions used in *sections 35 to 44*.

Northern Ireland

Section 46: Victims of mentally disordered persons

134. *Section 46* amends the Justice (Northern Ireland) Act 2002 to require the Secretary of

State to create a similar scheme for victims of mentally disordered offenders in Northern Ireland.

Section 47: Investigations by the Parliamentary Commissioner

135. *Section 47 and Schedule 7* amend the Parliamentary Commissioner Act 1967. The amendments extend the jurisdiction of the Parliamentary Commissioner for Administration so that he can investigate and report on:

- complaints that a duty under the code of practice for victims issued under *section 32* has been breached;
- complaints that any person has failed to comply with a duty to victims under *sections 35 to 44*.

136. Complaints will have to be made to the Parliamentary Commissioner through a Member of Parliament, in the same way as complaints of maladministration within the Parliamentary Commissioner's existing remit. The Parliamentary Commissioner will have the same powers to obtain evidence and examine witnesses as he has in relation to complaints of maladministration. The provisions as to secrecy of information will also apply in the same way as to complaints of maladministration.

137. *Paragraph 2(4) of Schedule 7* provides that the matters excluded from the Parliamentary Commissioner's remit are slightly different for complaints of breaches of the code or *sections 35 to 44* than they are for complaints of maladministration under the 1967 Act. Matters relating to criminal investigations and proceedings are excluded from the Parliamentary Commissioner's remit in respect of complaints of maladministration under the 1967 Act but such an exclusion would make the exercise of his functions in relation to breaches of the code and *sections 35 to 44* ineffective. Therefore, this exclusion does not apply in respect of complaints about such breaches.

Section 48: Commissioner for Victims and Witnesses

138. *Section 48* provides for a Commissioner for Victims and Witnesses to be appointed by the Secretary of State, in consultation with the Attorney General and the Lord Chancellor. The effect of providing that the Commissioner is a corporation sole (*subsection (3)*) is that the office of the Commissioner has legal personality and that the Commissioner (in his capacity as office holder) can hold property, bring legal proceedings and employ staff. *Subsections (4) and (5)* provide that the Commissioner is not to be a Crown servant, which would be inappropriate to his independent role.

139. *Subsection (6)* introduces *Schedule 8*, which makes detailed provision about the Commissioner. *Paragraph 1* provides for the Secretary of State to appoint a Deputy Commissioner who will carry on the Commissioner's functions if he is unable to do so. *Paragraphs 2, 5 and 6* concern the terms of appointment and remuneration of the Commissioner and Deputy Commissioner and *paragraph 10* provides that they will be disqualified from sitting in Parliament or the Northern Ireland Assembly (office holders are usually disqualified from membership of the Scottish Parliament and National Assembly for Wales by order made by the relevant authority). *Paragraphs 3 and 4* allow the Commissioner to appoint his own staff and to authorise them to carry out his functions. *Paragraphs 8 and 9* provide for the Commissioner to prepare an annual plan, which will be subject to the approval of the Secretary of State, and to prepare an annual report which he

must send to the Secretary of State, who will be required to lay the report before Parliament and publish it.

Section 49: General functions of the Commissioner

140. *Section 49* outlines the functions of the Commissioner. Under *subsection (1)*, the Commissioner's primary functions are to promote the interests of victims and witnesses of crime and anti-social behaviour, take steps to encourage good practice in their treatment and keep the code issued under *section 32* under review. *Subsection (2)* provides for various ways in which he can carry out these functions, including making a report to the Secretary of State, commissioning research and making recommendations to an authority within his remit (as to which see *section 53*).

141. *Subsection (3)* requires that where the Commissioner makes a report to the Secretary of State under *subsection (2)*, the Secretary of State must send the report to the Attorney General and the Lord Chancellor, lay the report before Parliament and arrange for its publication.

Section 50: Advice

142. *Section 50* obliges the Commissioner to provide advice on issues relating to victims and witnesses of crime and anti-social behaviour when requested to do so by any Government Minister.

143. The authorities within the Commissioner's remit may ask the Commissioner to give specific advice in connection with the information they provide, through whatever medium, to victims and witnesses.

Section 51: Restrictions on exercise of functions

144. *Section 51* prevents the Commissioner from exercising his functions on behalf of individual victims or witnesses. He cannot, for example, ask the police or Crown Prosecution Service to bring or reconsider a particular charge against an individual offender, or ask for the courts to impose a particular sentence. On the other hand, the Commissioner will not be prevented from commenting on charging or sentencing policy, or any other wider policy issue relating to victims and witnesses.

Section 52: Victims and Witnesses

145. *Section 52* provides definitions of "victim" and "witness", for the purpose of *sections 48 to 51*. These definitions are wide enough to include: victims of offences in respect of which no offence was reported to the police or no suspect was charged or convicted (*subsection (3)*); witnesses who are not actually called to give evidence (*subsection (4)*); and the victims or witnesses of anti-social behaviour. The effect is that the Commissioner is not excluded from considering the position of those victims who, for whatever reason, choose not to report crime or anti-social behaviour, or those witnesses who do not come forward to make statements or give evidence.

146. Under *subsections (4) and (6)*, the definition of witness does not include witnesses who are or would be defendants in criminal proceedings or any anti-social behaviour proceedings.

Section 53: Authorities within the Commissioner's remit

147. *Section 53* introduces *Schedule 9* which lists the authorities which fall within the Commissioner's remit. The list includes authorities which might have a more general impact on victims and witnesses, not just authorities with an interest in the criminal justice system. *Subsection (2)* provides the Secretary of State with the power to amend this list by order, in consultation with the Attorney General and the Lord Chancellor. By virtue of *Section 61(4)*, this power is subject to the affirmative resolution procedure.

Section 54: Disclosure of information

148. *Section 54* enables information to be disclosed to those bound by the code issued under *section 32*, local probation boards, the Commissioner and authorities within his remit for the purposes of: compliance with the code; compliance with the duties under *sections 35 to 44*; and the carrying out of the Commissioner's functions.

149. Under *subsections (4) to (6)*, the Secretary of State may, in consultation with the Attorney General and the Lord Chancellor, amend the Section by order so as to permit disclosure of information to a wider range of people or for a wider range of purposes. However, the persons to whom information is disclosed must exercise functions of a public nature and the purpose must be connected with the assistance of victims, witnesses and others affected by offences and anti-social behaviour. By virtue of *Section 61(4)*, this power is subject to the affirmative resolution procedure.

150. *Subsection (7)*, makes clear that permission to disclose under this section does not override the provision of the Data Protection Act 1998. It is also implicit that the provisions of the Human Rights Act 1998 would need to be taken into account before any disclosure is made under this section.

Section 55: Victims' Advisory Panel

151. *Section 55* requires the Secretary of State to appoint a Victims' Advisory Panel which he can consult on matters relating to victims and witnesses of crime and of anti-social behaviour. The Panel will be required to publish an annual report if the Secretary of State has consulted it during a particular year. The Secretary of State must consult the Attorney General and the Lord Chancellor before appointing or removing a member of the Panel.

152. The Home Secretary announced his intention to set up a Victims' Advisory Panel in March 2002, as stated in paragraph 2.45 (page 48) of the July 2002 White Paper "*Justice For All*". A non-statutory advisory non-departmental public body known as the Victims' Advisory Panel was duly recruited and met for the first time on 3 March 2003.

153. The membership of the current Panel comprises ten voluntary lay members, who have direct experience of victimisation, three co-opted members representing wider victims' interests, representatives of voluntary organisations to which the Government provides core funding to provide direct services to victims and witnesses, and senior officials from criminal justice agencies. It is chaired by the Minister for Criminal Justice, and is also attended by a minister from the Department for Constitutional Affairs, and the Solicitor General.

154. By *subsection (7)* the non-statutory Victims' Advisory Panel is to be treated as having been established in accordance with this section.

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

Section 56: Grants for assisting victims, witnesses etc

155. *Section 56* will give the Secretary of State power to give grants to such persons or organisations as he considers appropriate in connection with measures intended to provide personal support to victims of crime, witnesses of crime, and others affected by crime. The section allows the Secretary of State to attach conditions to the giving of the grant.

156. The Home Office currently gives annual grants to several voluntary organisations which help victims and witnesses. This section will regularise the Home Office position in relation to current and future core funding programmes for victims and witnesses, and is consistent with Treasury best practice that there should be specific statutory authority for regular government grants to voluntary sector bodies.

Section 57: Recovery of criminal injuries compensation from offenders

157. *Section 57* amends the Criminal Injuries Compensation Act 1995. Subsection (2) inserts new sections 7A, 7B, 7C and 7D into that Act. Section 7A gives the Secretary of State power to make regulations enabling the Criminal Injuries Compensation Authority to recover from offenders the money it has paid in compensation to their victims under the Criminal Injuries Compensation Scheme. Section 7B provides for a person from whom an amount has been determined as recoverable under those regulations to be given a recovery notice. Section 7C sets out a procedure for a review of a determination that an amount is recoverable from a person and the amount determined as recoverable. Section 7D provides that an amount determined as recoverable from a person is recoverable as a debt due to the Crown. Section 7D also sets out defences that may be relied on by a person from whom an amount is sought to be recovered, and makes provision about limitation. Parallel legislation will be required by the Scottish Parliament to extend this power to Scotland.

PART 4: SUPPLEMENTARY

Section 58: Amendments and Repeals

158. *Section 58* introduces *Schedules 10 and 11*. *Schedule 10* makes minor and consequential amendments to the existing legislation. This includes: changes to the Family Law Act 1996, a set of amendments to a range of legislation to ensure the new offence of causing or allowing the death of child is comparable to other homicide offences, and existing insanity legislation.

Section 61: Orders

159. *Section 37* provides that subordinate legislation is to be made by statutory instrument and makes provision as to the procedure which should apply to particular powers under the Act. It allows subordinate legislation to make different provision for different purposes and to include supplementary, incidental, saving or transitional provision.

Section 62: Extent

160. The Act generally applies to England and Wales only. *Sections 5,9,17 to 21, and 56* and *Schedule 1* apply also to Northern Ireland. *Sections 7, 10(2), 13, 23 and 46* apply to Northern Ireland only. The amendments and repeals in *Schedules 7,8,10 or 11* have the same extent as the provisions to which they relate.

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

COMMENCEMENT

161. *Section 60* contains provisions relating to the coming into force of the Act. The Act's provisions will be brought into force on dates appointed by the Secretary of State by commencement order.

HANSARD REFERENCES

162. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard Reference
HOUSE OF LORDS		
Introduction	1 December 2003	Col 105
Second Reading	15 December 2003	Cols 949 – 960 and Col 972 – 1018
Committee	19 January 2004 21 January 2004 28 January 2004 2 February 2004 5 February 2004 9 February 2004	Cols GC 191 – GC252 Cols GC 311 – GC 372 Cols GC 135 – GC 178 Cols GC 233 – GC 282 Cols GC 409 – GC 454 Cols GC 455 – GC 482
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