

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

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Domestic Violence Etc**

#### ***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.