

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

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

##### ***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.

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

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.