

DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Domestic Violence Etc

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:

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

- 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.