

# DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

#### *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.