



Domestic Violence, Crime and Victims Act 2004

2004 CHAPTER 28

PART 1

DOMESTIC VIOLENCE ETC

Amendments to Part 4 of the Family Law Act 1996

1 Breach of non-molestation order to be a criminal offence

In Part 4 of the Family Law Act 1996 (c. 27) (family homes and domestic violence), after section 42 insert—

“42A Offence of breaching non-molestation order

- (1) A person who without reasonable excuse does anything that he is prohibited from doing by a non-molestation order is guilty of an offence.
- (2) In the case of a non-molestation order made by virtue of section 45(1), a person can be guilty of an offence under this section only in respect of conduct engaged in at a time when he was aware of the existence of the order.
- (3) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.
- (4) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.
- (5) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.

Status: Point in time view as at 01/10/2012.

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(6) A reference in any enactment to proceedings under this Part, or to an order under this Part, does not include a reference to proceedings for an offence under this section or to an order made in such proceedings.

“Enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30).”

2 Additional considerations if parties are cohabitants or former cohabitants

(1) Section 41 of the Family Law Act 1996 (c. 27) (which requires a court, when considering the nature of the relationship of cohabitants or former cohabitants, to have regard to their non-married status) is repealed.

(2) In section 36(6)(e) of that Act (court to have regard to nature of parties' relationship when considering whether to give right to occupy to cohabitant or former cohabitant with no existing right), after “relationship” insert “ and in particular the level of commitment involved in it ”.

3 “Cohabitants” in Part 4 of 1996 Act to include same-sex couples

In section 62(1)(a) of the Family Law Act 1996 (definition of “cohabitant” for the purposes of Part 4 of that Act), for the words after “ “cohabitants” are” substitute “ two persons who, although not married to each other, are living together as husband and wife or (if of the same sex) in an equivalent relationship; and ”.

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

In section 62(3) of the Family Law Act 1996 (definition of “associated” persons for the purposes of Part 4 of that Act), after paragraph (e) insert—

“(ea) they have or have had an intimate personal relationship with each other which is or was of significant duration;”.

[^{F1}Causing or allowing the death of a child or vulnerable adult][^{F1}Causing or allowing a child or vulnerable adult to die or suffer serious physical harm]

Textual Amendments

F1 S. 5 cross-heading substituted (E.W.) (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\), ss. 1\(7\), 4\(2\)](#) (with s. 1(8)); S.I. 2012/1432, art. 2

5 The offence

(1) A person (“D”) is guilty of an offence if—

- (a) a child or vulnerable adult (“V”) dies [^{F2} or suffers serious physical harm] as a result of the unlawful act of a person who—
 - (i) was a member of the same household as V, and
 - (ii) had frequent contact with him,
- (b) D was such a person at the time of that act,
- (c) at that time there was a significant risk of serious physical harm being caused to V by the unlawful act of such a person, and

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- (d) either D was the person whose act caused [F³V's death][F³the death or serious physical harm] or—
- (i) D was, or ought to have been, aware of the risk mentioned in paragraph (c),
 - (ii) D failed to take such steps as he could reasonably have been expected to take to protect V from the risk, and
 - (iii) the act occurred in circumstances of the kind that D foresaw or ought to have foreseen.
- (2) The prosecution does not have to prove whether it is the first alternative in subsection (1)(d) or the second (sub-paragraphs (i) to (iii)) that applies.
- (3) If D was not the mother or father of V—
- (a) D may not be charged with an offence under this section if he was under the age of 16 at the time of the act that caused [F⁴V's death][F⁴the death or serious physical harm] ;
 - (b) for the purposes of subsection (1)(d)(ii) D could not have been expected to take any such step as is referred to there before attaining that age.
- (4) For the purposes of this section—
- (a) a person is to be regarded as a “member” of a particular household, even if he does not live in that household, if he visits it so often and for such periods of time that it is reasonable to regard him as a member of it;
 - (b) where V lived in different households at different times, “the same household as V” refers to the household in which V was living at the time of the act that caused [F⁵V's death][F⁵the death or serious physical harm] .
- (5) For the purposes of this section an “unlawful” act is one that—
- (a) constitutes an offence, or
 - (b) would constitute an offence but for being the act of—
 - (i) a person under the age of ten, or
 - (ii) a person entitled to rely on a defence of insanity.
- Paragraph (b) does not apply to an act of D.
- (6) In this section—
- “act” includes a course of conduct and also includes omission;
 - “child” means a person under the age of 16;
 - “serious” harm means harm that amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861 (c. 100);
 - “vulnerable adult” means a person aged 16 or over whose ability to protect himself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise.
- (7) A person guilty of an offence under this section [F⁶ of causing or allowing a person's death] is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or to a fine, or to both.
- [F⁷(8) A person guilty of an offence under this section of causing or allowing a person to suffer serious physical harm is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine, or to both.]

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Textual Amendments

- F2** Words in s. 5(1)(a) inserted (E.W.) (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\)](#), **ss. 1(2)(a)**, 4(2) (with s. 1(8)); S.I. 2012/1432, art. 2
- F3** Words in s. 5(1)(d) substituted (E.W.) (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\)](#), **ss. 1(2)(b)**, 4(2) (with s. 1(8)); S.I. 2012/1432, art. 2
- F4** Words in s. 5(3)(a) substituted (E.W.) (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\)](#), **ss. 1(3)**, 4(2) (with s. 1(8)); S.I. 2012/1432, art. 2
- F5** Words in s. 5(4)(b) substituted (E.W.) (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\)](#), **ss. 1(4)**, 4(2) (with s. 1(8)); S.I. 2012/1432, art. 2
- F6** Words in s. 5(7) inserted (E.W.) (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\)](#), **ss. 1(5)**, 4(2) (with s. 1(8)); S.I. 2012/1432, art. 2
- F7** S. 5(8) inserted (E.W.) (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\)](#), **ss. 1(6)**, 4(2) (with s. 1(8)); S.I. 2012/1432, art. 2

6 [F8 Evidence and procedure in cases of death: England and Wales]

- (1) Subsections (2) to (4) apply where a person (“the defendant”) is charged in the same proceedings with an offence of murder or manslaughter and with an offence under section 5 in respect of the same death (“the section 5 offence”).
- (2) Where by virtue of section 35(3) of the Criminal Justice and Public Order Act 1994 (c. 33) a court or jury is permitted, in relation to the section 5 offence, to draw such inferences as appear proper from the defendant’s failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether he is guilty—
 - (a) of murder or manslaughter, or
 - (b) of any other offence of which he could lawfully be convicted on the charge of murder or manslaughter,
 even if there would otherwise be no case for him to answer in relation to that offence.
- (3) The charge of murder or manslaughter is not to be dismissed under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (c. 37) (unless the section 5 offence is dismissed).
- (4) At the defendant’s trial the question whether there is a case for the defendant to answer on the charge of murder or manslaughter is not to be considered before the close of all the evidence (or, if at some earlier time he ceases to be charged with the section 5 offence, before that earlier time).
- (5) An offence under section 5 [F9 of causing or allowing a person's death] is an offence of homicide for the purposes of the following enactments—
 - sections 24 and 25 of the Magistrates' Courts Act 1980 (c. 43) (mode of trial of child or young person for indictable offence);
 - section 51A of the Crime and Disorder Act 1998 (sending cases to the Crown Court: children and young persons);
 - section 8 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (power and duty to remit young offenders to youth courts for sentence).

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Textual Amendments

- F8** S. 6 heading substituted (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\), s. 4\(2\), Sch. para. 8\(2\)](#); S.I. 2012/1432, art. 2
- F9** Words in s. 6(5) inserted (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\), s. 4\(2\), Sch. para. 8\(1\)](#); S.I. 2012/1432, art. 2

[^{F10}6A Evidence and procedure in cases of serious physical harm: England and Wales

- (1) Subsections (3) to (5) apply where a person (“the defendant”) is charged in the same proceedings with a relevant offence and with an offence under section 5 in respect of the same harm (“the section 5 offence”).
- (2) In this section “relevant offence” means—
 - (a) an offence under section 18 or 20 of the Offences against the Person Act 1861 (grievous bodily harm etc);
 - (b) an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit murder.
- (3) Where by virtue of section 35(3) of the Criminal Justice and Public Order Act 1994 a court or jury is permitted, in relation to the section 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether the defendant is guilty of a relevant offence, even if there would otherwise be no case for the defendant to answer in relation to that offence.
- (4) The charge of the relevant offence is not to be dismissed under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (unless the section 5 offence is dismissed).
- (5) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of the relevant offence is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 5 offence, before that earlier time).]

Textual Amendments

- F10** S. 6A inserted (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\), ss. 2, 4\(2\)](#); S.I. 2012/1432, art. 2

7 Evidence and procedure: Northern Ireland

- (1) Subsections (2) to (4) apply where a person (“the defendant”) is charged in the same proceedings with an offence of murder or manslaughter and with an offence under section 5 in respect of the same death (“the section 5 offence”).
- (2) Where by virtue of Article 4(4) of the Criminal Evidence (Northern Ireland) Order 1988 (S.I. 1988/1987 (N.I. 20)) a court or jury is permitted, in relation to the section 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether he is guilty—
 - (a) of murder or manslaughter, or

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- (b) of any other offence of which he could lawfully be convicted on the charge of murder or manslaughter,
even if there would otherwise be no case for him to answer in relation to that offence.
- (3) Where a magistrates' court is considering under Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) whether to commit the defendant for trial for the offence of murder or manslaughter, if there is sufficient evidence to put him upon trial for the section 5 offence there is deemed to be sufficient evidence to put him upon trial for the offence of murder or manslaughter.
- (4) At the defendant's trial the question whether there is a case to answer on the charge of murder or manslaughter is not to be considered before the close of all the evidence (or, if at some earlier time he ceases to be charged with the section 5 offence, before that earlier time).
- (5) An offence under section 5 is an offence of homicide for the purposes of the following provisions—
Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) (mode of trial of child for indictable offence);
Article 32 of that Order (power and duty to remit children to youth courts for sentence).

8 Evidence and procedure: [^{F11}the Court Martial]

- (1) Section 6(1), (2) and (4) has effect in relation to proceedings before [^{F12}the Court Martial] with the following adaptations.
- [^{F13}(2) A reference to an offence—
(a) of murder,
(b) of manslaughter, or
(c) under section 5,
is to be read as a reference to an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is that offence.]
- (3) A reference to the court or jury is to be read as a reference to the court.
- [^{F14}(4) Section 6A(1), (3) and (5) has effect in relation to proceedings before the Court Martial with the following adaptations.
- (5) A reference to an offence—
(a) listed in section 6A(2), or
(b) under section 5,
is to be read as a reference to an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is that offence.
- (6) A reference to the court or jury is to be read as a reference to the court.]

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Textual Amendments

- F11** Words in s. 8 sidenote substituted (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(1), 383(2), [Sch. 16 para. 238\(2\)](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in S.I. 2009/1059)
- F12** Words in s. 8(1) substituted (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(1), 383(2), [Sch. 16 para. 238\(3\)](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in S.I. 2009/1059)
- F13** S. 8(2) substituted (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(1), 383(2), [Sch. 16 para. 238\(4\)](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in S.I. 2009/1059)
- F14** S. 8(4)-(6) inserted (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\)](#), s. 4(2), [Sch. para. 9](#); S.I. 2012/1432, [art. 2](#)

Modifications etc. (not altering text)

- C1** S. 8(2) modified (24.4.2009 for certain purposes, otherwise 31.10.2009) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), arts. 1(3), 205, [Sch. 1 para. 54](#)

Domestic homicide reviews

9 Establishment and conduct of reviews

- (1) In this section “domestic homicide review” means a review of the circumstances in which the death of a person aged 16 or over has, or appears to have, resulted from violence, abuse or neglect by—
- a person to whom he was related or with whom he was or had been in an intimate personal relationship, or
 - a member of the same household as himself,
- held with a view to identifying the lessons to be learnt from the death.
- (2) The Secretary of State may in a particular case direct a specified person or body within subsection (4) to establish, or to participate in, a domestic homicide review.
- (3) It is the duty of any person or body within subsection (4) establishing or participating in a domestic homicide review (whether or not held pursuant to a direction under subsection (2)) to have regard to any guidance issued by the Secretary of State as to the establishment and conduct of such reviews.
- [^{F15}(3A) Any reference in subsection (2) or (3) to the Secretary of State shall, in relation to persons and bodies within subsection (4)(b), be construed as a reference to the Department of Justice in Northern Ireland.]
- (4) The persons and bodies within this subsection are—
- in relation to England and Wales—
 - chief officers of police for police areas in England and Wales;
 - local authorities;
 - local probation boards established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);
 - [^{F16}providers of probation services;]
 - Strategic Health Authorities established under [^{F17}section 13 of the National Health Service Act 2006];

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Primary Care Trusts established under [^{F18}section 18] of that Act.
Local Health Boards established under [^{F19}section 11 of the National Health Service (Wales) Act 2006];
NHS trusts established under [^{F20}section 25 of the National Health Service Act 2006 or section 18 of the National Health Service (Wales) Act 2006];

- (b) in relation to Northern Ireland—
the Chief Constable of the Police Service of Northern Ireland;
the Probation Board for Northern Ireland;
Health and Social Services Boards established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));
Health and Social Services trusts established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)).

- (5) In subsection (4)(a) “local authority” means—
(a) in relation to England, the council of a district, county or London borough, the Common Council of the City of London and the Council of the Isles of Scilly;
(b) in relation to Wales, the council of a county or county borough.

- (6) The Secretary of State may [^{F21}, in relation to England and Wales,] by order amend subsection [^{F22}(4)(a)] or (5).

- [^{F23}(7) The Department of Justice in Northern Ireland may, in relation to Northern Ireland, by order amend subsection (4)(b).]

Textual Amendments

- F15** S. 9(3A) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 12, **Sch. 14 para. 85(2)** (with arts. 28-31); S.I. 2010/977, art. 1(2)
- F16** Words in s. 9(4)(a) inserted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\)](#), arts. 1, 3, **Sch. 1 para. 20(2)**
- F17** Words in s. 9(4)(a) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 2, 8(2), **Sch. 1 para. 263(a)** (with Sch. 3 Pt. 1)
- F18** Words in s. 9(4)(a) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 2, 8(2), **Sch. 1 para. 263(b)** (with Sch. 3 Pt. 1)
- F19** Words in s. 9(4)(a) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 2, 8(2), **Sch. 1 para. 263(c)** (with Sch. 3 Pt. 1)
- F20** Words in s. 9(4)(a) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 2, 8(2), **Sch. 1 para. 263(d)** (with Sch. 3 Pt. 1)
- F21** Words in s. 9(6) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 12, **Sch. 14 para. 85(3)(a)** (with arts. 28-31); S.I. 2010/977, art. 1(2)
- F22** Words in s. 9(6) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 12, **Sch. 14 para. 85(3)(b)** (with arts. 28-31); S.I. 2010/977, art. 1(2)
- F23** S. 9(7) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 12, **Sch. 14 para. 85(4)** (with arts. 28-31); S.I. 2010/977, art. 1(2)

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Commencement Information

II S. 9 in force at 13.4.2011 for E.W. by [S.I. 2011/1008](#), **art. 2**

Status:

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