



# Domestic Violence, Crime and Victims Act 2004

## 2004 CHAPTER 28

### PART 1

#### DOMESTIC VIOLENCE ETC

##### *Causing or allowing the death of a child or vulnerable adult*

#### **5 The offence**

- (1) A person (“D”) is guilty of an offence if—
  - (a) a child or vulnerable adult (“V”) dies 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
  - (d) either D was the person whose act caused V’s death 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 V’s death;
  - (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 V’s death.
- (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 is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or to a fine, or to both.

## 6 Evidence and procedure: 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 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).

## **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
  - (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: courts-martial**

- (1) Section 6(1), (2) and (4) has effect in relation to proceedings before courts-martial with the following adaptations.

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*Status: This is the original version (as it was originally enacted).*

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- (2) A reference to an offence of murder or manslaughter or an offence under section 5 is to be read as a reference to an offence under—
- (a) section 70 of the [Army Act 1955 \(3 & 4 Eliz. 2 c. 18\)](#),
  - (b) section 70 of the [Air Force Act 1955 \(3 & 4 Eliz. 2 c. 19\)](#), or
  - (c) section 42 of the [Naval Discipline Act 1957 \(c. 53\)](#),
- for which the offence referred to in section 6 is the corresponding civil offence (within the meaning of that Act).
- (3) A reference to the court or jury is to be read as a reference to the court.