



# 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.

- (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the nature of the relationship of cohabitants or former cohabitants, to have regard to their non-married status) is repealed.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;”.

*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

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- (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.
- (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.

### *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) a person to whom he was related or with whom he was or had been in an intimate personal relationship, or
  - (b) 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.
- (4) The persons and bodies within this subsection are—
  - (a) 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 \(c. 43\)](#);
    - Strategic Health Authorities established under section 8 of the [National Health Service Act 1977 \(c. 49\)](#);
    - Primary Care Trusts established under Section 16A of that Act.
    - Local Health Boards established under section 16BA of that Act;
    - NHS trusts established under section 5 of the [National Health Service and Community Care Act 1990 \(c. 19\)](#);
  - (b) in relation to Northern Ireland—

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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 by order amend subsection (4) or (5).