



Domestic Violence, Crime and Victims Act 2004

2004 CHAPTER 28

PART 1

DOMESTIC VIOLENCE ETC

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

5 The offence

- (1) A person (“D”) is guilty of an offence if—
 - (a) a child or vulnerable adult (“V”) dies [^{F1}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
 - (d) either D was the person whose act caused [^{F2}the 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—

Changes to legislation: Domestic Violence, Crime and Victims Act 2004, Section 5 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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 [^{F3}the 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 [^{F4}the 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 [^{F5} of causing or allowing a person's death] is [^{F6}liable—
- (a) on conviction on indictment in England and Wales, to imprisonment for life or to a fine, or to both;
 - (b) on conviction on indictment in Northern Ireland,] 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 [^{F8}liable—
- (a) on conviction on indictment in England and Wales, to imprisonment for a term not exceeding 14 years or to a fine, or to both;
 - (b) on conviction on indictment in Northern Ireland,] to imprisonment for a term not exceeding 10 years or to a fine, or to both.]

Textual Amendments

- F1** 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 and words in s. 5(1)(a) inserted (N.I.) (29.1.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), **ss. 96(2)(a)**, 106(2); S.R. 2015/418, art. 2(b)

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- F2** 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 and words in s. 5(1)(d) substituted (N.I.) (29.1.2016) by Justice Act (Northern Ireland) 2015 (c. 9), **ss. 96(2)(b)**, 106(2); S.R. 2015/418, art. 2(b)
- F3** 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 and words in s. 5(3)(a) substituted (N.I.) (29.1.2016) by Justice Act (Northern Ireland) 2015 (c. 9), **ss. 96(3)**, 106(2); S.R. 2015/418, art. 2(b)
- F4** 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 and words in s. 5(4)(b) substituted (N.I.) (29.1.2016) by Justice Act (Northern Ireland) 2015 (c. 9), **ss. 96(4)**, 106(2); S.R. 2015/418, art. 2(b)
- F5** 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 and words in s. 5(7) inserted (N.I.) (29.1.2016) by Justice Act (Northern Ireland) 2015 (c. 9), **ss. 96(5)**, 106(2); S.R. 2015/418, art. 2(b)
- F6** S. 5(7)(a)(b) and word substituted for words in s. 5(7) (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 123(2)**, 208(5)(j) (with s. 123(4))
- 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 and s. 5(8) inserted (N.I.) (29.1.2016) by Justice Act (Northern Ireland) 2015 (c. 9), **ss. 96(6)**, 106(2); S.R. 2015/418, art. 2(b)
- F8** S. 5(8)(a)(b) and word substituted for words in s. 5(7) (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 123(3)**, 208(5)(j) (with s. 123(4))

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 9 para. 26A inserted by [2015 c. 2 Sch. 3 para. 12](#)