

*These notes refer to the Domestic Violence, Crime and Victims Act 2004 (c.28) which received Royal Assent on 15 November 2004*

# **DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

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

#### ***Section 3: “Cohabitants” in Part 4 of the Family Law Act 1996 to include same-sex couples***

20. Same-sex couples may apply for non-molestation orders by virtue of living together in the same household, but not for occupation orders merely by virtue of being an associated person. They must also have been legally entitled to occupy the dwelling-house and the house must have been intended to be their home. “Legal entitlement” means to occupy the dwelling-house concerned by virtue of a beneficial estate or interest or contract or by virtue of any other enactment giving the right to remain.
21. This section amends the definition of cohabitants to include same-sex cohabitants. This will enable same-sex cohabitants to apply for occupation orders under section 36 and section 38 of the Family Law Act 1996, even where they may not be “legally entitled”, to bring their rights into line with the rights of opposite-sex cohabitants. It will also enable them to apply for a non-molestation order by virtue of being a cohabitant, rather than by virtue of being part of the same household as the respondent.
22. *Schedule 10* contains amendments replacing references to “living together” as husband and wife in Part 4 and Schedule 7 to the Act with the term - “cohabit” - to ensure that any reference in Part 4 and Schedule 7 to the Act to living together as husband and wife will encompass both opposite and same-sex cohabitants. The term “former cohabitant” is also amended to include former same-sex cohabitants.