



EXPLANATORY NOTES

Domestic Violence, Crime and Victims (Amendment) Act 2012

Chapter 4

£5.75

DOMESTIC VIOLENCE, CRIME AND VICTIMS (AMENDMENT) ACT 2012

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Domestic Violence, Crime and Victims (Amendment) Act which received Royal Assent on 8 March 2012. They have been prepared by the Ministry of Justice in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

TERRITORIAL EXTENT AND APPLICATION

3. Section 4(3) and (4) set out the territorial extent of the Act. The main substantive provisions of the Act extend to England and Wales only (section 4(3)). The Act does not contain any provisions that fall within the legislative competence of the National Assembly for Wales and does not affect the functions of the Welsh Ministers.

SUMMARY AND BACKGROUND

4. Section 5 of the Domestic Violence, Crime and Victims Act 2004 created an offence of causing or allowing the death of a child or vulnerable adult. That offence was created to deal with cases where it was clear that one of a number of adults in a household was responsible for the death of a child or vulnerable adult in that household but it could not be proved which.

5. The Act extends the offence in section 5 of the Domestic Violence, Crime and Victims Act 2004, to cover causing or allowing serious physical harm (equivalent to grievous bodily harm) to a child or vulnerable adult.

6. The Act also provides for special procedural and evidential rules, similar to those at section 6 of the 2004 Act, which apply to certain offences which are charged within the same proceedings as the extended section 5 offence.

COMMENTARY ON SECTIONS

Section 1: Causing or allowing a child or vulnerable adult to suffer serious physical harm

7. *Section 1* amends section 5 of the 2004 Act so as to extend the offence in section 5 to cover cases of causing or allowing a child or vulnerable adult to suffer serious physical harm. For the most part it does this by inserting references to “serious physical harm” at appropriate places in section 5.

8. The same conditions which apply in the case of causing or allowing the death of a child or vulnerable adult as set out in section 5 of the 2004 Act will therefore also apply for causing or allowing serious physical harm. The extended offence will therefore:

- be limited to cases where the victim has died or has suffered serious physical harm as a result of an unlawful act (section 5(1)(a) of the 2004 Act). It will not apply to a death or serious physical harm which results from an accident, or from a natural cause.
- apply only to members of a victim’s household (section 5(1)(a)(i) of the 2004 Act) who had frequent contact with the victim (section 5(1)(a)(ii) of the 2004 Act), and could therefore reasonably be expected to have been aware of a risk of serious physical harm to the victim, and to have protected the victim from such harm. The household member must have either caused the victim’s death or the serious physical harm or failed to take reasonable steps to protect the victim (section 5(1)(d) of the 2004 Act).
- not require the prosecution to prove whether a defendant was responsible for causing the death or serious physical harm or for allowing the death or serious physical harm (section 5(2) of the 2004 Act).
- apply only where the victim was at significant risk of serious physical harm (section 5(1)(c) of the 2004 Act). The risk is likely to be demonstrated by a history of violence towards the vulnerable person, or towards others in the household. The extended offence will not apply if there was no previous history of abuse, nor any reason to suspect a risk. Where there is no reason to suspect the victim is at risk, other members of the household cannot reasonably be expected to have taken steps to prevent the abuse.
- apply only to those who are 16 or over unless they are the mother or father of the victim (section 5(4) of the 2004 Act). Members of the household aged under 16 will not have a duty of care or be expected to take steps to prevent a victim coming to harm. In particular, a child under 16 will have no duty to prevent his parents from harming a sibling. The parents of a child will be expected to take reasonable steps to protect their child even if they themselves are under 16.

9. *Subsection (5)* amends section 5(7) of the 2004 Act so that the maximum penalty of 14 years applies only in the case of causing or allowing a person’s death. *Subsection (6)* inserts a new section 5(8), providing a maximum penalty of 10 years in the case of causing or

allowing serious physical harm.

10. *Subsection (8)* makes transitional provision to ensure that the operation of the extended offence will not have retrospective effect.

Section 2: Evidence and procedure in cases of serious physical harm

11. *Section 2* inserts a new section 6A into the 2004 Act, similar to section 6 of the 2004 Act. New section 6A provides for special rules for trials in England and Wales where a defendant is charged within the same proceedings, and in relation to the same physical harm, with an offence of causing or allowing serious physical harm under section 5 and with an offence under section 18 or 20 of the Offences Against the Person Act 1861 (grievous bodily harm etc) or an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit murder (*subsection (1) and subsection (2)*). The provisions in *subsections (3) to (5)* apply where this is the case.

12. *Subsection (3)* makes provision for drawing such inferences as appear proper from a defendant's failure to give evidence in court (or refusal, without good cause, to answer any question). Where a court or jury is permitted under section 35(3) of the Criminal Justice and Public Order Act 1994 to draw an adverse inference in respect of the offence under section 5 from the defendant's failure to give evidence or to answer questions, an adverse inference may also be drawn in relation to the charge under section 18 or 20 of the Offences Against the Person Act 1861 or a charge under section 1 of the Criminal Attempts Act 1981 of attempting to commit murder, even if there would otherwise be no case for the defendant to answer on that charge.

13. *Subsection (4)* sets out how charges should be dealt with where a person is sent by a magistrates' court to the Crown Court for trial (pursuant to section 51 of the Crime and Disorder Act 1998), and the defence makes an application for the charges to be dismissed (under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998). This subsection prevents the charge under section 18 or 20 of the Offences Against the Person Act 1861 or a charge under section 1 of the Criminal Attempts Act 1981 of attempting to commit murder being dismissed if the judge does not dismiss the section 5 charge.

14. *Subsection (5)* defers the decision on a question of whether there is a "case to answer" on a charge under section 18 or 20 of the Offences Against the Person Act 1861 or a charge under section 1 of the Criminal Attempts Act 1981 of attempting to commit murder until the close of the defence case, unless the prosecution fails to establish a case to answer on a charge under the section 5 offence by the conclusion of its case. This means that the court will hear all the evidence that is to be presented in the case before deciding whether the charges can safely be left to the jury.

Section 3: Consequential amendments

15. *Section 3* gives effect to the Schedule which contains consequential amendments to other legislation.

These notes refer to the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4) which received Royal Assent on 8 March 2012

Section 4: Short title, commencement and extent

16. *Section 4(2)* establishes a power for the Secretary of State to make a statutory instrument setting out when the Act will come into force.

17. *Section 4(3)* provides that the extent of the Act - England and Wales - is subject to *section 4(4)*.

18. *Section 4(4)* provides that the consequential amendments made to other legislation by paragraphs 9 to 11 of the Schedule have the same extent as the provisions to which they relate.

Schedule: consequential amendments

19. The Schedule contains amendments to other legislation. These are as follows.

Criminal Justice Act 1982

20. Part 2 of Schedule 1 to that Act (offences excluded from early release provisions) refers to “Section 5 (causing or allowing the death of a child or vulnerable adult).” *Paragraph 1* of the Schedule amends the reference to the section 5 offence to include reference to causing or allowing serious physical harm.

Coroners Act 1988

21. *Paragraph 2(2) and 2(3)* of the Schedule amend the Coroners Act 1988 to make clear that references in that Act to an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 should only be to the offence as it applies to causing or allowing death and not to causing or allowing serious physical harm. *Paragraph 2(4)* of the Schedule provides that the amendments made to the Coroners Act 1988 will cease to have effect when the repeal of that Act by Schedule 23 to the Coroners and Justice Act 2009 takes effect.

Law Reform (Year and a Day Rule) Act 1996

22. Section 2(3)(c) of that Act (restriction on institution of proceedings for fatal offence) refers to “an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult)”. *Paragraph 3* of the Schedule amends section 2 to make clear that references in that Act to an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 should only be to the offence as it applies to causing or allowing death and not to causing or allowing serious physical harm.

Criminal Justice and Court Services Act 2000

23. Paragraph 3 of Schedule 4 to that Act (offences against children for the purposes of disqualification orders) refers to “an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult) in respect of a child.” *Paragraph 4* of the Schedule amends the reference to the section 5 offence to

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include reference to causing or allowing serious physical harm.

Sexual Offences Act 2003

24. Paragraph 63A of Schedule 5 to that Act (other offences for the purposes of making sexual offences prevention orders) refers to “An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).” *Paragraph 5* of the Schedule amends the reference to the section 5 offence to include causing or allowing serious physical harm.

Criminal Justice Act 2003

25. Part 1 of Schedule 15 to the Criminal Justice Act 2003 (specified violent offences for purposes of Chapter 5 of Part 12 of that Act) refers to “An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult)”. *Paragraph 6* of the Schedule amends the reference to the section 5 offence to include causing or allowing serious physical harm.

Domestic Violence, Crime and Victims Act 2004

26. *Paragraph 8* of the Schedule amends the heading and subsection (5) of section 6 of the Domestic Violence, Crime and Victims Act 2004 (evidence and procedure: England and Wales) to make clear that section 6 applies only to evidence and procedure in cases of death.

27. *Paragraph 9* of the Schedule inserts new subsections (4), (5) and (6) in section 8 of the 2004 Act to enable the special rules provided in new section 6A (evidence and procedure in cases of serious physical harm: England and Wales) to apply to proceedings before the Court Martial where the defendant is charged within the same proceedings, and in relation to the same serious physical harm, with the military offences which correspond to those referred to in section 6A.

28. *Paragraph 10* of the Schedule amends section 62(4) of the 2004 Act (extent of section 8) to include reference to new section 6A as well as to section 6.

Armed Forces Act 2006

29. *Paragraph 11* of the Schedule amends section 51 of the Armed Forces Act 2006 (jurisdiction of Service Civilian Court) so that the reference, in subsection (5)(a) of that Act, to an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 includes reference to causing or allowing serious physical harm.

Coroners and Justice Act 2009

30. Paragraph 1(6)(d) of Schedule 1 to the Coroners and Justice Act 2009 includes an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 in the definition of “homicide offence”. *Paragraph 12* of the Schedule amends the reference to the section 5 offence to make clear that it should only be to the offence as it applies to causing or

allowing death and not to causing or allowing serious physical harm.

COMMENCEMENT

31. The Act will come into force on a day that the Secretary of State will specify by order (section 4(2)).

HANSARD REFERENCES

32. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
House of Commons		
First Reading	30 June 2010	Vol 512 Col 869
Second Reading	18 March 2011	Vol 525 Col 667
Committee	22 June 2011	Public Bill Committee
Report and Third Reading	21 October 2011	Vol 533 Cols 1180-1186
House of Lords		
First Reading	21 October 2011	Vol 731 Col 459
Second Reading	21 January 2012	Vol 734 Cols 1275-1293
Order of commitment discharged	15 February 2012	Vol 735 Col 791
Third Reading	29 February 2012	Vol 735 Col 1303

Royal Assent – 8 March 2012 House of Lords Hansard Vol 735 Col 1893
House of Commons Hansard Vol 541 Col 1008

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