

# Domestic Violence, Crime and Victims Bill [HL]

## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as HL Bill 6 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

The Baroness Scotland of Asthal has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Domestic Violence, Crime and Victims Bill are compatible with the Convention rights.



# Domestic Violence, Crime and Victims Bill [HL]

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**B I L L**

TO

Amend Part 4 of the Family Law Act 1996 and the Protection from Harassment Act 1997; to make provision about homicide; to make common assault an arrestable offence; to provide for a procedure under which a jury tries only sample counts on an indictment; and to make provision in relation to victims of offences, witnesses of offences and others affected by offences.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**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— 5

**“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. 10
- (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. 15

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- (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; 5
  - (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).” 10
- 2 “Cohabitants” in Part 4 of 1996 Act to include same-sex couples**
- In section 62(1)(a) of the Family Law Act 1996 (c. 27) (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”. 15
- 3 Extension of Part 4 of 1996 Act to non-cohabiting couples** 20
- 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* 25
- 4 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 30
    - (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 – 35
    - (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. 40
- (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. 5
- (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; 10
  - (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 15
  - (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 – 20
- “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. 25
- (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. 30

## 5 Evidence and procedure

- (1) Where –
- (a) a person is charged in the same proceedings with an offence of murder or manslaughter and with an offence under section 4 in respect of the same death, and 35
  - (b) in relation to the offence under section 4, the court or jury is permitted, by virtue of section 35(3) of the Criminal Justice and Public Order Act 1994 (c. 33), to draw such inferences as appear proper from the defendant’s failure to give evidence or refusal to answer a question, 40
- the court or jury may also draw such inferences in determining whether he is guilty on the charge of murder or manslaughter (even if there would otherwise be no case for him to answer on that charge).
- (2) Where –
- (a) a person is charged with an offence of murder or manslaughter, and 45
  - (b) he or another person is charged in the same proceedings with an offence under section 4 in respect of the same death,

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 at trial.

- (3) The reference in subsection (2) to the question whether there is a case to answer includes a reference to the question whether, for the purposes of paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (c. 37) (applications for dismissal), the evidence against the person in question would be sufficient for him to be properly convicted. 5
- (4) An offence under section 4 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); 10
  - 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). 15

#### *Domestic homicide reviews*

### **6 Establishment and conduct of reviews**

- (1) In this section “domestic homicide review” means a review of the circumstances in which a person aged 16 or over has died as a result of violence, abuse or neglect from – 20
- (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. 25
- (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. 30
- (4) The persons and bodies within this subsection are –
- chief officers of police for police areas in England and Wales;
  - local authorities; 35
  - local probation boards established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);
  - 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. 40
- (5) In subsection (4) “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; 45

- (6) The Secretary of State may by order amend subsection (4) or (5).

## PART 2

### CRIMINAL PROCEDURE ETC

#### *Assault and harassment*

- 7 Common assault to be an arrestable offence** 5
- (1) In Schedule 1A to the Police and Criminal Evidence Act 1984 (c. 60) (specific offences which are arrestable offences), before paragraph 15 (but after the heading “*Criminal Justice Act 1988*”) insert—  
“14A Common assault.”
- (2) In Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (specific offences which are arrestable offences), after paragraph (k) insert—  
“(l) common assault.” 10
- 8 Restraining orders**
- (1) In section 5 of the Protection from Harassment Act 1997 (c. 40) (power to make restraining order where defendant convicted of offence under section 2 or 4 of that Act), in subsection (1) omit “under section 2 or 4”. 15
- (2) After subsection (4) of that section insert—  
“(4A) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (4).” 20
- (3) After that section insert—  
**“5A Restraining orders on acquittal**
- (1) A court before which a person (“the defendant”) is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order. 25
- (2) In proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 3.
- (3) Subsections (3) to (6) of section 5 apply to an order under this section as they apply to an order under that one. 30
- (4) Where the Court of Appeal allow an appeal against conviction they may remit the case to the Crown Court to consider whether to proceed under this section.
- (5) Where— 35  
(a) the Crown Court allows an appeal against conviction, or  
(b) a case is remitted to the Crown Court under subsection (4),  
the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

- (6) A person made subject to an order under this section has the same right of appeal against the order as if –
- (a) he had been convicted of the offence in question before the court which made the order, and
  - (b) the order had been made under section 5.”

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*Trial by jury of sample counts only*

**9 Application by prosecution for certain counts to be tried without a jury**

- (1) The prosecution may apply to a judge of the Crown Court for a trial on indictment to take place on the basis that the trial of some, but not all, of the counts included in the indictment may be conducted without a jury. 10
- (2) If such an application is made and the judge is satisfied that the following three conditions are fulfilled, he may make an order for the trial to take place on the basis that the trial of some, but not all, of the counts included in the indictment may be conducted without a jury.
- (3) The first condition is that the number of counts included in the indictment is likely to mean that a trial by jury involving all of those counts would be impracticable. 15
- (4) The second condition is that, if an order under subsection (2) were made, each count or group of counts which would accordingly be tried with a jury can be regarded as a sample of counts which could accordingly be tried without a jury. 20
- (5) The third condition is that it is in the interests of justice for an order under subsection (2) to be made.
- (6) In deciding whether or not to make an order under subsection (2), the judge must have regard to any steps which might reasonably be taken to facilitate a trial by jury. 25
- (7) But a step is not to be regarded as reasonable if it could lead to the possibility of a defendant in the trial receiving a lesser sentence than would be the case if that step were not taken.
- (8) An order under subsection (2) must specify the counts which may be tried without a jury. 30
- (9) For the purposes of this section and sections 10 to 12, a count (“the sample count”) is to be regarded as a sample of other counts if –
- (a) the defendant in respect of each count is the same person, and
  - (b) the judge considers that the sample count is a sample of the other counts. 35

**10 Procedure for applications under section 9**

- (1) An application under section 9 must be determined at a preparatory hearing.
- (2) Section 7(1) of the 1987 Act and section 29(2) of the 1996 Act are to have effect as if the purposes there mentioned included the purpose of determining an application under section 9. 40

- (3) Section 29(1) of the 1996 Act is to have effect as if the grounds on which a judge of the Crown Court may make an order under that provision included the ground that an application under section 9 has been made.
- (4) The parties to a preparatory hearing at which an application under section 9 is to be determined must be given an opportunity to make representations with respect to the application. 5
- (5) Section 9(11) of the 1987 Act and section 35(1) of the 1996 Act are to have effect as if they also provided for an appeal to the Court of Appeal to lie from the determination by a judge of an application under section 9.
- (6) In this section – 10
  - “preparatory hearing” means a preparatory hearing within the meaning of the 1987 Act or Part 3 of the 1996 Act;
  - “the 1987 Act” means the Criminal Justice Act 1987 (c. 38);
  - “the 1996 Act” means the Criminal Procedure and Investigations Act 1996 (c. 25). 15

## 11 Effect of order under section 9(2)

- (1) The effect of an order under section 9(2) is that where, in the course of the proceedings to which the order relates, a defendant is found guilty by a jury on a count which can be regarded as a sample of other counts to be tried in those proceedings, those other counts may be tried without a jury in those proceedings. 20
- (2) Where the trial of a count is conducted without a jury because of an order under section 9(2), the court is to have all the powers, authorities and jurisdiction which the court would have had if the trial of that count had been conducted with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury). 25
- (3) Except where the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to the trial of a count conducted without a jury because of an order under section 9(2), as a reference to the court, the verdict of the court or the finding of the court. 30
- (4) Where the trial of a count is conducted without a jury because of an order under section 9(2) and the court convicts the defendant of that count – 35
  - (a) the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction, and
  - (b) the reference in section 18(2) of the Criminal Appeal Act 1968 (c. 19) (notice of appeal or of application for leave to appeal to be given within 28 days from date of conviction etc) to the date of the conviction is to be read as a reference to the date of the judgment mentioned in paragraph (a). 40
- (5) Where the trial of a count is conducted with a jury because of an order under section 9(2) and the jury convicts the defendant of that count, time does not begin to run under section 18(2) of the Criminal Appeal Act 1968 in relation to an appeal against that conviction until the date on which the trial ends. 45
- (6) Nothing in this Part affects –

- (a) the requirement under section 4 of the Criminal Procedure (Insanity) Act 1964 (c. 84) that a question of fitness to be tried be determined by a jury, or
- (b) the requirement under section 4A of that Act that any question, finding or verdict mentioned in that section be determined, made or returned by a jury. 5

## 12 Rules of court

- (1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of sections 9 to 11.
- (2) Without limiting subsection (1), rules of court may in particular make provision for time limits within which applications under section 9 must be made or within which other things in connection with that section or section 10 or 11 must be done. 10
- (3) Nothing in this section is to be taken as affecting the generality of any enactment conferring powers to make rules of court. 15

## PART 3

### VICTIMS ETC

#### *Victims' code*

## 13 Code of practice for victims

- (1) The Secretary of State must issue a code of practice as to the services to be provided to a victim of criminal conduct by persons appearing to him to have functions relating to— 20
  - (a) victims of criminal conduct, or
  - (b) any aspect of the criminal justice system.
- (2) The code may restrict the application of its provisions to— 25
  - (a) specified descriptions of victims;
  - (b) victims of specified offences or descriptions of conduct;
  - (c) specified persons or descriptions of persons appearing to the Secretary of State to have functions of the kind mentioned in subsection (1).
- (3) The code may include provision requiring or permitting the services which are to be provided to a victim to be provided to one or more others— 30
  - (a) instead of the victim (for example where the victim has died);
  - (b) as well as the victim.
- (4) The code may make different provision for different purposes, including different provision for— 35
  - (a) different descriptions of victims;
  - (b) persons who have different functions or descriptions of functions;
  - (c) different areas.
- (5) The code may not require anything to be done by— 40
  - (a) a person acting in a judicial capacity;

- (b) a person acting in the discharge of a function of a member of the Crown Prosecution Service which involves the exercise of a discretion.
- (6) In determining whether a person is a victim of criminal conduct for the purposes of this section, it is immaterial that no person has been charged with or convicted of an offence in respect of the conduct. 5
- (7) In this section –
  - “criminal conduct” means conduct constituting an offence;
  - “specified” means specified in the code.

#### 14 Procedure

- (1) Subsections (2) to (7) apply in relation to a code of practice required to be issued under section 13. 10
- (2) The Secretary of State must prepare a draft of the code.
- (3) In preparing the draft the Secretary of State must consult the Attorney General and (if the Secretary of State is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs. 15
- (4) After preparing the draft the Secretary of State must –
  - (a) publish the draft;
  - (b) specify a period during which representations about the draft may be made to him.
- (5) The Secretary of State must – 20
  - (a) consider in consultation with the Attorney General and (if the Secretary of State is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs any representations made to him before the end of the specified period about the draft;
  - (b) if he thinks it appropriate, modify the draft in the light of any such representations. 25
- (6) After the Secretary of State has proceeded under subsection (5) he must lay the code before Parliament.
- (7) When he has laid the code before Parliament the Secretary of State must bring it into operation on such day as he appoints by order. 30
- (8) The Secretary of State may from time to time revise a code previously brought into operation under this section; and subsections (2) to (7) apply to a revised code as they apply to the code as first prepared.

#### 15 Effect of non-compliance

- (1) If a person fails to perform a duty imposed on him by a code issued under section 13, the failure does not of itself make him liable to criminal or civil proceedings. 35
- (2) But the code is admissible in evidence in criminal or civil proceedings and a court may take into account a failure to comply with the code in determining a question in the proceedings. 40

*Parliamentary Commissioner***16 Investigations by Parliamentary Commissioner**

Schedule 1 (which amends the Parliamentary Commissioner Act 1967 (c. 13)) has effect.

*Commissioner for Victims and Witnesses*

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**17 Commissioner for Victims and Witnesses**

- (1) The Secretary of State must appoint a Commissioner for Victims and Witnesses (referred to in this Part as the Commissioner).
- (2) Before appointing the Commissioner the Secretary of State must consult the Attorney General and (if the Secretary of State is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs as to the person to be appointed. 10
- (3) The Commissioner is a corporation sole.
- (4) The Commissioner is not to be regarded –
  - (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown. 15
- (5) The Commissioner’s property is not to be regarded as property of, or held on behalf of, the Crown.
- (6) Schedule 2 (which make further provision in connection with the Commissioner) has effect. 20

**18 General functions of Commissioner**

- (1) The Commissioner must –
  - (a) promote the interests of victims and witnesses;
  - (b) take such steps as he considers appropriate with a view to encouraging good practice in the treatment of victims and witnesses; 25
  - (c) keep under review the operation of the code of practice issued under section 13.
- (2) The Commissioner may, for any purpose connected with the performance of his duties under subsection (1) –
  - (a) make proposals to the Secretary of State for amending the code (at the request of the Secretary of State or on his own initiative); 30
  - (b) make a report to the Secretary of State;
  - (c) make recommendations to an authority within his remit;
  - (d) undertake or arrange for or support (financially or otherwise) the carrying out of research; 35
  - (e) consult any person he thinks appropriate.
- (3) If the Commissioner makes a report to the Secretary of State under subsection (2)(b) –
  - (a) the Commissioner must send a copy of the report to the Attorney General and (if the Secretary of State to whom the Commissioner makes 40

- the report is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs;
- (b) the Secretary of State must lay a copy of the report before Parliament and arrange for the report to be published.

**19 Advice** 5

- (1) If he is required to do so by a Minister of the Crown, the Commissioner must give advice to the Minister of the Crown in connection with any matter which—
  - (a) is specified by the Minister, and
  - (b) relates to victims or witnesses. 10
- (2) If he is required to do so by or on behalf of an authority within his remit, the Commissioner must give advice to the authority in connection with the information provided or to be provided by or on behalf of the authority to victims or witnesses.
- (3) In this section “Minister of the Crown” includes the Treasury. 15

**20 Restrictions on exercise of functions**

- The Commissioner must not exercise any of his functions in relation to—
- (a) a particular victim or witness;
  - (b) the bringing or conduct of particular criminal proceedings;
  - (c) anything done or omitted to be done by a person acting in a judicial capacity or on the instructions of or on behalf of such a person. 20

**21 “Victims” and “witnesses”**

- (1) This section applies for the purposes of sections 17 to 20.
- (2) “Victim” means a victim of an offence.
- (3) It is immaterial for the purposes of subsection (2) that—
  - (a) no complaint has been made about the offence;
  - (b) no person has been charged with or convicted of the offence. 25
- (4) “Witness” means a person (other than a defendant)—
  - (a) who has witnessed conduct in relation to which he may be or has been called to give evidence in criminal proceedings; 30
  - (b) who is able to provide or has provided anything which might be used or has been used as evidence in criminal proceedings; or
  - (c) who is able to provide or has provided anything mentioned in subsection (5) (whether or not admissible in evidence in criminal proceedings). 35
- (5) The things referred to in subsection (4)(c) are—
  - (a) anything which might tend to confirm, has tended to confirm or might have tended to confirm evidence which may be, has been or could have been admitted in criminal proceedings;
  - (b) anything which might be, has been or might have been referred to in evidence given in criminal proceedings by another person; 40

- (c) anything which might be, has been or might have been used as the basis for any cross examination in the course of criminal proceedings.
- (6) For the purposes of subsection (4) a person is a defendant in relation to any criminal proceedings if he might be, has been or might have been charged with or convicted of an offence in the proceedings. 5

## 22 Authorities within Commissioner’s remit

- (1) For the purposes of this Part the authorities within the Commissioner’s remit are those specified in Schedule 3.
- (2) The Secretary of State may by order amend Schedule 3 by – 10
- (a) adding an authority appearing to him to exercise functions of a public nature;
  - (b) omitting an authority;
  - (c) changing the description of an authority.
- (3) In preparing a draft of an order under subsection (2) the Secretary of State must consult the Attorney General and (if the Secretary of State is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs. 15

### *Information*

## 23 Disclosure of information

- (1) A person may disclose information to a relevant authority for a purpose specified in subsection (2). 20
- (2) The purposes are purposes connected with any of these –
- (a) compliance with the code issued under section 13;
  - (b) compliance with section 69 of the Criminal Justice and Court Services Act 2000 (c. 43) (duties of local probation boards in connection with victims of certain offences); 25
  - (c) the carrying out of the functions of the Commissioner.
- (3) These are relevant authorities –
- (a) a person required to do anything under the code issued under section 13; 30
  - (b) a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000;
  - (c) the Commissioner;
  - (d) an authority within the Commissioner’s remit.
- (4) The Secretary of State may by order – 35
- (a) amend subsection (2) by adding any purpose appearing to him to be connected with the assistance of victims, witnesses or other persons affected by offences;
  - (b) amend subsection (3) by adding any authority appearing to him to exercise functions of a public nature. 40
- (5) The reference in subsection (4)(a) to persons affected by offences does not include persons accused or convicted of offences.

- (6) The Secretary of State may exercise the power in subsection (4) only after consulting the Attorney General and (if the Secretary of State is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs.
- (7) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed). 5
- (8) But nothing in this section authorises the making of a disclosure which contravenes the Data Protection Act 1998 (c. 29).
- (9) This section does not affect a power to disclose which exists apart from this section. 10

*Victims' Advisory Panel*

**24 Victims' Advisory Panel**

- (1) The Secretary of State must appoint persons to form a panel, to be known as the Victims' Advisory Panel.
- (2) The Secretary of State must consult the Attorney General and (if the Secretary of State is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs before – 15
  - (a) appointing a person to the Panel, or
  - (b) removing a person from the Panel.
- (3) The Secretary of State must consult the Panel at such times and in such manner as he thinks appropriate on matters appearing to him to relate to victims of offences or witnesses of offences. 20
- (4) The Secretary of State may reimburse the members of the Panel for such of their travelling and other expenses as he thinks appropriate.
- (5) If the Secretary of State consults the Panel under subsection (3) in a particular year, he must arrange for the Panel to prepare a report for the year – 25
  - (a) summarising what the Panel has done in response to the consultation, and
  - (b) dealing with such other matters as the Panel consider appropriate.
- (6) If a report is prepared under subsection (5), the Secretary of State must – 30
  - (a) arrange for it to be published, and
  - (b) lay it before Parliament.
- (7) The non-statutory Victims' Advisory Panel is to be treated as having been established in accordance with this section.
- (8) If the Secretary of State consults the non-statutory Victims' Advisory Panel on a matter mentioned in subsection (3) before the date on which this section comes into force, the consultation is to be treated as taking place under subsection (3). 35
- (9) The non-statutory Victims' Advisory Panel is the unincorporated body of persons known as the Victims' Advisory Panel established by the Secretary of State before the date on which this section comes into force. 40
- (10) In this section “year” means a period of 12 months beginning on 1 April.

*Grants***25 Grants for assisting victims, witnesses etc**

- (1) The Secretary of State may pay such grants to such persons as he considers appropriate in connection with measures which appear to him to be intended to assist victims, witnesses or other persons affected by offences. 5
- (2) The Secretary of State may make a grant under this section subject to such conditions as he considers appropriate.

**PART 4**

## SUPPLEMENTARY

**26 Amendments and repeals** 10

- (1) Schedule 4 (minor and consequential amendments) has effect.
- (2) The enactments mentioned in Schedule 5 are repealed to the extent specified.

**27 Transitional and transitory provisions**

- (1) Section 1 and paragraphs 4 to 6 of Schedule 4 apply only in relation to conduct occurring on or after the commencement of that section. 15
- (2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference to 12 months in subsection (5)(b) of section 42A of the Family Law Act 1996 (inserted by section 1 of this Act) is to be read as a reference to six months.
- (3) In section 4, the reference in subsection (1)(a) to an unlawful act does not include an act that (or so much of an act as) occurs before the commencement of that section. 20
- (4) In relation to any time before the commencement of the repeal (by paragraph 51 of Schedule 3 to the Criminal Justice Act 2003) of section 6 of the Magistrates' Courts Act 1980 (c. 43), the reference in section 5(2) above to the question whether there is a case to answer on the charge of murder or manslaughter includes a reference to the question whether, for the purposes of section 6(1) of the 1980 Act, there is sufficient evidence against the person in question to put him on trial by jury for that offence. 25
- (5) Section 7 applies only in relation to offences committed on or after the commencement of that section. 30
- (6) Section 8(1) and paragraphs 10(3) and 12 of Schedule 4 do not apply where the conviction occurs before the commencement of those provisions.
- (7) Section 8(2) applies only in relation to applications made on or after the commencement of that provision. 35
- (8) Section 8(3) and paragraphs 10(2) and 11 of Schedule 4 do not apply where the acquittal (or, where subsection (5) of the inserted section 5A applies, the allowing of the appeal) occurs before the commencement of those provisions.
- (9) Each entry in Schedule 5 applies in the same way as the provision of this Act to which it corresponds. 40

## **28 Commencement**

The preceding provisions of this Act come into force in accordance with provision made by the Secretary of State by order.

## **29 Orders**

- (1) An order under this Act – 5
  - (a) may make different provision for different purposes;
  - (b) may include supplementary, incidental, saving or transitional provisions.
- (2) Any power to make an order under this Act is exercisable by statutory instrument. 10
- (3) A statutory instrument containing an order under section 6(5) or 14(7) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) No order may be made under section 22(2) or 23(4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House. 15

## **30 Extent**

- (1) Apart from section 7(2), which extends to Northern Ireland only, Parts 1 and 2 and section 26 (and Schedules 4 and 5) extend to England and Wales only.
- (2) Sections 13 to 23 extend to England and Wales only, except that the amendments in Schedules 1 and 2 have the same extent as the provisions amended. 20

## **31 Short title**

This Act may be cited as the Domestic Violence, Crime and Victims Act 2004.

## SCHEDULES

## SCHEDULE 1

Section 16

## INVESTIGATIONS BY PARLIAMENTARY COMMISSIONER

- 1 The Parliamentary Commissioner Act 1967 (c. 13) is amended as follows.
- 2 (1) Section 5 (matters subject to investigation) is amended as follows. 5
- (2) After subsection (1) insert –
- “(1A) Subsection (1C) of this section applies if –
- (a) a written complaint is duly made to a member of the House of Commons by a member of the public who claims that a person has failed to perform a relevant duty owed by him to the member of the public, and 10
- (b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of the House of Commons with a request to conduct an investigation into it. 15
- (1B) For the purposes of subsection (1A) of this section a relevant duty is a duty imposed by –
- (a) a code of practice issued under section 13 of the Domestic Violence, Crime and Victims Act 2004 (code of practice for victims), or 20
- (b) section 69 of the Criminal Justice and Court Services Act 2000 (duties of local probation boards in connection with victims of certain offences).
- (1C) If this subsection applies, the Commissioner may investigate the complaint.” 25
- (3) In subsection (3) for “investigation under this Act” substitute “investigation under subsection (1) of this section”.
- (4) After subsection (4) insert –
- “(4A) Without prejudice to subsection (2) of this section, the Commissioner shall not conduct an investigation pursuant to a complaint under subsection (1A) of this section in respect of – 30
- (a) action taken by or with the authority of the Secretary of State for the purposes of protecting the security of the State, including action so taken with respect to passports, or
- (b) any action or matter described in any of paragraphs 1 to 4 and 6A to 11 of Schedule 3 to this Act. 35

- (4B) Her Majesty may by Order in Council amend subsection (4A) of this section so as to exclude from paragraph (a) or (b) of that subsection such actions or matters as may be described in the Order.
- (4C) Any statutory instrument made by virtue of subsection (4B) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.” 5
- 3 (1) Section 7 (procedure in respect of investigations) is amended as follows.
- (2) In subsection (1) after “complaint under” insert “section 5(1) of”.
- (3) After subsection (1) insert –
- “(1A) Where the Commissioner proposes to conduct an investigation pursuant to a complaint under section 5(1A) of this Act, he shall give the person to whom the complaint relates an opportunity to comment on any allegations contained in the complaint.” 10
- (4) In subsection (2) for “such investigation” substitute “investigation under this Act”. 15
- (5) In subsection (4) –
- (a) after “authority concerned” insert “or the person to whom the complaint relates”;
- (b) for “that department or authority” substitute “that department, authority or person”. 20
- 4 (1) Section 8 (evidence) is amended as follows.
- (2) In subsection (1) after “investigation under” insert “section 5(1) of”.
- (3) After subsection (1) insert –
- “(1A) For the purposes of an investigation pursuant to a complaint under section 5(1A) of this Act the Commissioner may require any person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.” 25
- (4) In subsection (2) for “such investigation” substitute “investigation under this Act”. 30
- 5 (1) Section 10 (reports by Commissioner) is amended as follows.
- (2) In subsection (2), after “investigation under” insert “section 5(1) of”.
- (3) After subsection (2) insert –
- “(2A) In any case where the Commissioner conducts an investigation pursuant to a complaint under section 5(1A) of this Act, he shall also send a report of the results of the investigation to the person to whom the complaint relates.” 35
- (4) In subsection (3) after “investigation under” insert “section 5(1) of”.
- (5) After subsection (3) insert –
- “(3A) If, after conducting an investigation pursuant to a complaint under section 5(1A) of this Act, it appears to the Commissioner that – 40
- (a) the person to whom the complaint relates has failed to perform a relevant duty owed by him to the person aggrieved, and

- (b) the failure has not been, or will not be, remedied, the Commissioner may, if he thinks fit, lay before each House of Parliament a special report upon the case.
- (3B) For the purposes of subsection (3A) of this section “relevant duty” has the meaning given by section 5(1B) of this Act.” 5
- (6) In subsection (5)(d) after “subsection (2)” insert “or (2A)”.
- 6 In section 12(1) (interpretation) for the definition of “person aggrieved” substitute –
- ““person aggrieved” –
- (a) in relation to a complaint under section 5(1) of this Act, means the person who claims or is alleged to have sustained such injustice as is mentioned in section 5(1)(a) of this Act; 10
- (b) in relation to a complaint under section 5(1A) of this Act, means the person to whom the duty referred to in section 5(1A)(a) of this Act is or is alleged to be owed;” 15

## SCHEDULE 2

Section 17

## COMMISSIONER FOR VICTIMS AND WITNESSES

*Deputy Commissioner*

- 1 (1) The Secretary of State must appoint a Deputy Commissioner for Victims and Witnesses (referred to in this Schedule as the Deputy Commissioner). 20
- (2) Before appointing the Deputy Commissioner the Secretary of State must consult the Attorney General and (if the Secretary of State is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs as to the person to be appointed. 25
- (3) The Deputy Commissioner must act as the Commissioner –
- (a) during any period when the office of Commissioner is vacant;
- (b) at any time when the Commissioner is absent or is unable to act.
- (4) The Deputy Commissioner is not to be regarded –
- (a) as the servant or agent of the Crown, or 30
- (b) as enjoying any status, immunity or privilege of the Crown.

*Terms of appointment*

- 2 (1) This paragraph applies in relation to a person appointed as the Commissioner or the Deputy Commissioner.
- (2) The period for which the person is appointed must not exceed 5 years. 35
- (3) The person is eligible for re-appointment.
- (4) The person may at any time resign from office by giving notice in writing to the Secretary of State.
- (5) The Secretary of State may at any time remove the person from office if he is satisfied that the person is unable or unfit to carry out his functions. 40

- (6) The Secretary of State must consult the Attorney General and (if the Secretary of State is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs before removing the person from office.
- (7) Subject to sub-paragraphs (2) to (6), the person holds office on the terms specified by the Secretary of State after consulting the Attorney General and (if the Secretary of State is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs. 5

### *Staff*

- 3 (1) The Commissioner may appoint such persons as members of his staff as he thinks fit. 10
- (2) The Commissioner must obtain the approval of the Secretary of State to—  
(a) the number of persons appointed as members of his staff, and  
(b) their terms and conditions of service.
- (3) No member of the staff of the Commissioner is to be regarded— 15  
(a) as the servant or agent of the Crown, or  
(b) as enjoying any status, immunity or privilege of the Crown.

### *Delegation*

- 4 The Commissioner may authorise any member of his staff or the Deputy Commissioner to carry out any of his functions. 20

### *Pensions*

- 5 (1) Schedule 1 to the Superannuation Act 1972 (c. 11) (kinds of employment and offices to which a scheme under section 1 of that Act may apply) is amended as set out in sub-paragraphs (2) and (3).
- (2) At the end of the list headed “Other Bodies” insert— 25  
“Employment as a member of the staff of the Commissioner for Victims and Witnesses.”
- (3) In the list headed “Offices”, in the appropriate places, insert—  
“Commissioner for Victims and Witnesses.”  
“Deputy Commissioner for Victims and Witnesses.” 30
- (4) The Secretary of State must pay to the Minister for the Civil Service, at such times as the Minister for the Civil Service may direct, such sums as the Minister for the Civil Service may determine in respect of the increase attributable to sub-paragraphs (1) to (3) in the sums payable out of money provided by Parliament under the Superannuation Act 1972. 35

### *Finance*

- 6 The Secretary of State must pay—  
(a) the remuneration of the Commissioner and the Deputy Commissioner;  
(b) such sums as he thinks fit in respect of the expenses of the Commissioner and the Deputy Commissioner. 40

*Accounts*

- 7 (1) The Commissioner must –
- (a) keep proper accounts and proper records in relation to the accounts;
  - (b) prepare a statement of accounts in respect of each financial year, in the form directed by the Secretary of State; 5
  - (c) send copies of the statement to the Secretary of State and the Comptroller and Auditor General, not later than the 31 August following the end of the financial year to which it relates.
- (2) The Comptroller and Auditor General must –
- (a) examine, certify and report on the statement of accounts; 10
  - (b) lay copies of the statement and of his report before Parliament.

*Annual plan*

- 8 (1) The Commissioner must, before the beginning of each financial year apart from the first, prepare a plan setting out how he intends to exercise his functions during the financial year (an annual plan). 15
- (2) In preparing the plan, the Commissioner must consider whether to deal in the plan with any issues specified by the Secretary of State.
- (3) The Commissioner must send a copy of the plan to the Secretary of State for his approval.
- (4) The Secretary of State must consult the Attorney General and (if the Secretary of State is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs in deciding whether to approve the plan. 20
- (5) If the Secretary of State does not approve the plan –
- (a) he must give the Commissioner his reasons for not approving it, and 25
  - (b) the Commissioner must revise the plan.
- (6) Sub-paragraphs (2) to (5) apply to a revised plan as they apply to the plan as first prepared.

*Annual report*

- 9 (1) The Commissioner must, as soon as possible after the end of each financial year, prepare a report on how he has exercised his functions during the financial year. 30
- (2) The report for any financial year apart from the first must include –
- (a) the Commissioner’s annual plan for the financial year, and
  - (b) an assessment of the extent to which the plan has been carried out. 35
- (3) The Commissioner must send a copy of the report to –
- (a) the Secretary of State,
  - (b) the Attorney General, and
  - (c) (if the Secretary of State by whom the Commissioner’s annual plan for the financial year is approved is not the Secretary of State for Constitutional Affairs) the Secretary of State for Constitutional Affairs. 40
- (4) The Secretary of State must –

- (a) lay a copy of the report before Parliament;
- (b) arrange for the report to be published.

*Disqualification Acts*

- 10 (1) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (offices the holders of which are disqualified) at the appropriate places insert – 5
- “Commissioner for Victims and Witnesses.”
- “Deputy Commissioner for Victims and Witnesses.”
- (2) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (offices the holders of which are disqualified) at the appropriate places insert – 10
- “Commissioner for Victims and Witnesses.”
- “Deputy Commissioner for Victims and Witnesses.”

*Meaning of “financial year”*

- 11 In this Schedule “financial year” means – 15
- (a) the period beginning on the day on which section 17 comes into force and ending on the next 31 March (which is the first financial year), and
  - (b) each subsequent period of 12 months beginning on 1 April.

SCHEDULE 3

Section 22 20

AUTHORITIES WITHIN COMMISSIONER’S REMIT

*Government departments*

- 1 The Department for Constitutional Affairs.
- 2 The Department for Education and Skills.
- 3 The Department of Health. 25
- 4 The Department of Trade and Industry.
- 5 The Department for Transport.
- 6 The Department for Work and Pensions.
- 7 The Foreign and Commonwealth Office.
- 8 The Home Office. 30
- 9 The Office of the Deputy Prime Minister.

*Customs and Excise*

- 10 The Commissioners of Customs and Excise.

*Police forces etc*

- |    |  |   |
|----|--|---|
| 11 | A police force for a police area in England or Wales.  |   |
| 12 | The Serious Fraud Office.  |   |
| 13 | The force of constables appointed under section 53 of the British Transport Commission Act 1949 (c. xxix). | 5 |

*Criminal injuries compensation*

- |    |   |  |
|----|---|--|
| 14 | The Criminal Injuries Compensation Appeals Panel. |  |
| 15 | The Criminal Injuries Compensation Authority.     |  |

*Health and safety*

- |    |                                   |    |
|----|-----------------------------------|----|
| 16 | The Health and Safety Commission. | 10 |
| 17 | The Health and Safety Executive.  |    |

*Legal services*

- |    |                                |  |
|----|--------------------------------|--|
| 18 | The Legal Services Commission. |  |
|----|--------------------------------|--|

*Court administration*

- |    |  |    |
|----|--|----|
| 19 | Persons exercising functions relating to the carrying on of the business of a court. | 15 |
|----|--|----|

*Criminal justice system*

- |    |  |    |
|----|--|----|
| 20 | The Criminal Cases Review Commission.  |    |
| 21 | The Crown Prosecution Service.   |    |
| 22 | A local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43). | 20 |
| 23 | The Parole Board.  |    |
| 24 | The Prison Service.  |    |
| 25 | The Youth Justice Board for England and Wales.   |    |
| 26 | A youth offending team established under section 39 of the Crime and Disorder Act 1998 (c. 37).                  | 25 |

*Maritime and coastguards*

- |    |                                     |  |
|----|-------------------------------------|--|
| 27 | The Maritime and Coastguard Agency. |  |
|----|-------------------------------------|--|

SCHEDULE 4

Section 26(1)

MINOR AND CONSEQUENTIAL AMENDMENTS

*Family Law Act 1996 (c. 27)*

- 1 (1) Section 36 of the Family Law Act 1996 (one cohabitant or former cohabitant with no existing right to occupy) is amended as follows. 5
  - (2) In subsection (1)(c), for the words from “live together as” to the end substitute “cohabit or a home in which they at any time cohabited or intended to cohabit”.
  - (3) In subsection (6)(f), for “lived together as husband and wife” substitute “cohabited”. 10
- 2 In section 38 of that Act (neither cohabitant or former cohabitant entitled to occupy), in subsection (1)(a), for “live or lived together as husband and wife” substitute “cohabit or cohabited”.
- 3 (1) Section 42 of that Act (non-molestation orders) is amended as follows. 15
  - (2) After subsection (4) insert –
    - “(4A) A court considering whether to make an occupation order shall also consider whether to exercise the power conferred by subsection (2)(b).
    - (4B) In this Part “the applicant”, in relation to a non-molestation order, includes (where the context permits) the person for whose benefit such an order would be or is made in exercise of the power conferred by subsection (2)(b).” 20
  - (3) In subsection (5)(a) omit the words from “or” to “made”.
- 4 (1) Section 46 of that Act (undertakings) is amended as follows. 25
  - (2) In subsection (3), after “under subsection (1)” insert “instead of making an occupation order”.
  - (3) After that subsection insert –
    - “(3A) The court shall not accept an undertaking under subsection (1) instead of making a non-molestation order in any case where it appears to the court that – 30
      - (a) the respondent has used or threatened violence against the applicant or a relevant child; and
      - (b) for the protection of the applicant or child it is necessary to make a non-molestation order so that any breach may be punishable under section 42A.” 35
- 5 (1) Section 47 of that Act (arrest for breach of occupation order or non-molestation order) is amended as follows. 40
  - (2) Omit subsection (1).
  - (3) In subsections (2) and (4), for “a relevant order” substitute “an occupation order”.
  - (4) In subsections (3) and (5), for “the relevant order” substitute “the occupation order”.

- (5) In subsection (8), for the words up to the end of paragraph (b) substitute –
- “If the court –
- (a) has made a non-molestation order, or
- (b) has made an occupation order but has not attached a power of arrest under subsection (2) or (3) to any provision of the order, or has attached that power only to certain provisions of the order,”.
- 6 In section 49 of that Act (variation and discharge of orders), in subsection (4) omit “or non-molestation order”.
- 7 In section 62 of that Act (definitions), in subsection (1)(b), for ““former cohabitants” is to be read accordingly, but” substitute ““cohabit” and “former cohabitants” are to be read accordingly, but the latter expression”.
- 8 (1) In section 63 of that Act (interpretation of Part 4), subsection (1) is amended as follows.
- (2) At the beginning of the definition of “cohabitant” and “former cohabitant” insert ““cohabit”,”.
- (3) In the definition of “relative”, for “is living or has lived with another person as husband and wife” substitute “is cohabiting or has cohabited with another person”.
- 9 (1) Schedule 7 to that Act (transfer of certain tenancies on divorce etc or on separation of cohabitants) is amended as follows.
- (2) In paragraph 3(2), for “to live together as husband and wife” substitute “to cohabit”.
- (3) In paragraph 4(b), for “lived together as husband and wife” substitute “cohabited”.
- Protection from Harassment Act 1997 (c. 40)*
- 10 (1) Section 5 of the Protection from Harassment Act 1997 (power to make restraining order where defendant convicted of offence under section 2 or 4 of that Act) is amended as follows.
- (2) In the heading, at the end insert “**on conviction**”.
- (3) In subsection (2) omit “further”.
- 11 In section 7 of that Act (interpretation), in subsection (1), for “sections 1 to 5” substitute “sections 1 to 5A”.
- Crime and Disorder Act 1998 (c. 37)*
- 12 In section 32 of the Crime and Disorder Act 1998 (racially or religiously aggravated harassment etc) omit subsection (7) (which is superseded by provision made by section 8(1) above).
- Criminal Justice Act 2003 (c. 44)*
- 13 In Schedule 15 to the Criminal Justice Act 2003 (specified offences for the purposes of Chapter 5 of Part 12 of that Act), in Part 1 (specified violent

offences), after paragraph 63 insert –

“63A An offence under section 4 of the Domestic Violence, Crime and Victims Act 2004.”

SCHEDULE 5

Section 26(2)

REPEALS

5

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Family Law Act 1996 (c. 27)	In section 42(5)(a), the words from “or” to “made”. Section 47(1). In section 49(4), the words “or non-molestation order”.	10
Protection from Harassment Act 1997 (c. 40)	In section 5, the words “under section 2 or 4” in subsection (1) and the word “further” in subsection (2).	
Crime and Disorder Act 1998 (c. 37)	Section 32(7).	15

# Domestic Violence, Crime and Victims Bill [HL]

A

## **B I L L**

To amend Part 4 of the Family Law Act 1996 and the Protection from Harassment Act 1997; to make provision about homicide; to make common assault an arrestable offence; to provide for a procedure under which a jury tries only sample counts on an indictment; and to make provision in relation to victims of offences, witnesses of offences and others affected by offences.

*The Baroness Scotland of Asthal*

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