

# Serious Crime Act 2015

## Fact sheet: Domestic Abuse Offence

### Background

1. Domestic abuse is a serious crime. It shatters the lives of its victims, and in some cases, leads to tragic and untimely deaths. That is why tackling domestic violence and abuse has been one of the Government's top priorities.
2. In recent years, much has been done to improve the response to domestic violence and abuse. The 'This is Abuse' campaign helps young people recognise abusive behaviours. The Government has increased the tools available to the police through the national roll-out of the Domestic Violence Disclosure Scheme, also known as Clare's Law, and Domestic Violence Protection Orders.
3. In September 2013 the Home Secretary commissioned Her Majesty's Inspectorate of Constabulary (HMIC) to review the police response to domestic abuse. HMIC reported their findings in March 2014, and identified significant failings. The Home Secretary is clear that there must be an immediate and lasting change in the police response to domestic abuse. This means a change in culture from the officers in charge to those on the frontline. The Home Secretary chairs a National Oversight Group to make sure this happens and all police forces have now published action plans to address HMIC's findings.
4. However, it is also vital that the legal framework provides the best possible protection to victims. Statistics from the Crime Survey for England and Wales suggest that in 2013/14, 2 million people were victims of domestic violence and abuse. HMIC report that over one million calls were made to the police regarding domestic abuse incidents in the year prior to August 2013. Crown Prosecution Service figures indicate that 78,000 prosecutions were brought in 2013/14. This is the highest ever volume of prosecutions for domestic violence and abuse, but still falls significantly short of best estimates of prevalence.
5. From 20 August to 15 October 2014 the Government ran a consultation that asked whether the law on domestic abuse needed to be strengthened to provide better protection to victims. Through the consultation the Government identified a gap in the law relating to patterns of abuse in ongoing relationships. 85% of respondents reported that the current legal framework did not provide adequate protection to victims. 55% of consultation respondents were in favour of closing this gap through a new specific offence of domestic abuse<sup>1</sup>.
6. The new offence in the Serious Crime Act closes the gap in the current legal framework in order to capture repeated or continuous coercive or controlling behaviour, specifically where that behaviour takes place in an ongoing intimate partner or inter-familial relationship.

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<sup>1</sup> <https://www.gov.uk/government/consultations/strengthening-the-law-on-domestic-abuse>

## **Law prior to the new offence**

7. Non-violent coercive behaviour which is a long-term campaign of abuse, may fall outside common assault, which requires the victim to fear the immediate application of unlawful violence.
8. Some patterns of non-violent domestic abuse could be captured by legislation that covers stalking and harassment. However, the law on stalking and harassment does not explicitly apply to coercive and controlling behaviour in intimate relationships. As some respondents to the consultation noted, the law on stalking and harassment is not designed to capture the dynamic of sinister exploitation of an intimate relationship to control another, particularly where a relationship is ongoing. The element of control is not such a feature of stalking or harassment, which is generally intended to intimidate or cause fear.
9. Domestic abuse adds an extra layer to such intimidation, with perpetrators operating under the guise of a close relation or partner to conceal their abuse, safe in the presumption that the victim is likely to want to continue a relationship despite the abuse. For these reasons, domestic abuse may be said to be more subversive than stalking. Even where stalking and harassment legislation may apply, Court of Appeal case law is a barrier (*R v Curtis* and *R v Widdows*) in that these behaviours have been found not to apply in ongoing intimate relationships where abuse is interspersed with affection.

## **Changes to the law**

10. The Serious Crime Act explicitly criminalises patterns of coercive or controlling behaviour where they are perpetrated against an intimate partner or family member. Like stalking this behaviour, when viewed in isolation, may appear unexceptional, but the cumulative impact on the victim's every-day life will be significant, causing the victim to feel fear, alarm or distress.
11. We recognise the importance of ensuring this new offence is clear, proportionate and does not impact on ordinary power dynamics in relationships. As such, the repeated or continuous nature of the behaviour and the ability of a reasonable person to appreciate that the behaviour will have a serious effect on its victim, are key elements of the new offence.
12. A defence is also included to provide a further safeguard against inappropriate use of the new offence. The defence will be available where the defendant can show that they believed they were acting in the victim's best interests and that their behaviour was objectively reasonable. This defence is intended to cover, for example, circumstances where someone was a carer for a mentally ill spouse, who by virtue of their medical condition, had to be kept in the home or compelled to take medication, for their own protection or in their own best interests. In this context, the spouse's behaviour might be considered controlling, but would be reasonable under the circumstances. The defence will not be available in cases where the defendant has caused the victim to fear violence.
13. In line with stalking legislation, and in recognition of the damage coercive and controlling behaviour can do to its victims, the new domestic abuse offence attracts a maximum penalty of five years' imprisonment or a fine, or both.