

GENERAL CRIME BRIEFING NOTE

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Topic: Implementation of the Judicial Finding of Domestic Abuse

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Section 6 of the Sentencing Act 2026 came into force on 5 October 2026, introducing a new section 56A of the Sentencing Code. The court must now, when passing sentence, formally record when an offence involves ‘domestic abuse’.

How will the changes be implemented?

Where the court is ‘*of the view that the offence involved domestic abuse carried out by the offender*’, then it is now obliged to state that view in open court. That can be announced either by way of a pronouncement or as part of the sentencing remarks. HMCTS will then record a finding under Criminal Procedure Rule 5.4 using a statutory result code. It is intended that this marker will then be readily identifiable in police, probation, and prison records.

What is the test?

The court will determine whether the offence involved domestic abuse as defined by section 1 Domestic Abuse Act 2021 i.e. where (i) A and B are over 16 and ‘personally connected’ to each other (in the sense set out in section 2 of the 2021 Act e.g. married, related, in an ‘intimate personal relationship’), and (ii) the behaviour is ‘abusive’, namely either physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse (in the sense of s.1(4) of the 2021 Act) or psychological, emotional or other abuse.

Consideration of the definition of ‘domestic abuse’ in the 2021 Act has so far been primarily the focus of the Family Courts. This caselaw may be of assistance for the criminal courts in determining when the new s.56A duty is engaged. In [Re H-N and Others \(children\) \(domestic abuse: finding of fact hearings\) \[2021\] EWCA Civ 448](#) (pre-dating the 2021 Act), the Court of Appeal set out a useful review of the authorities on some of the definitions of domestic abuse in Family Practice Direction 12J which were later incorporated into the 2021 Act as passed.

The High Court, in [R. \(on the application of Commissioner of Police of the Metropolis\) v Kingston-upon-Thames Crown Court \[2023\] EWHC 1938 \(Admin\)](#), in the context of a firearms licensing

appeal, acknowledged that domestic abuse can consist of a single incident and stressed the importance of referencing the statutory guidance published in 2022¹.

Any additional considerations?

i) Prosecutors

There does not appear to be currently any CPS guidance on when prosecuting counsel should invite/remind the court to consider its duty under s.56A of the Code. Prosecutors will have to be vigilant about applying the Sentencing Council's Overarching Domestic Abuse Guideline and flagging those cases which meet the criteria.

ii) Defence Practitioners

What might previously have been recorded as assault or criminal damage may now be additionally classified as 'domestic abuse'. For many defendants, a clear recording of domestic abuse will be of significant concern. Although, at this stage, the exact form that such a finding would take is unclear - for example, how such a finding would appear in a DBS or PNC search has not been outlined.

iii) Impact on Sentences

It may be that this new requirement provokes judges to award weightier sentences even where domestic abuse is not referenced in the specific sentencing guidelines. Furthermore, given the consequences of such a record, both reputationally and practically, it may be that the application of ss. 1 and 2 becomes the focus of more legal arguments in the criminal courts, including at the appellate stage.

iv) Armed Forces Amendment

Those involved in military tribunals should be aware that the act introduces a parallel amendment into the *Armed Forces Act 2006* which similarly requires any court or officer passing a sentence for an offence which involves domestic abuse conduct to state this determination in open court.

This briefing note was produced by [Philip Stott](#) and [Jack Woods](#). This note should not be taken as constituting formal legal advice. To obtain expert legal advice on any particular situation arising from the issues discussed in this note, please contact our clerking team at barristers@qebhw.co.uk. For more information on the expertise of our specialist barristers in criminal and regulatory law please see our website at www.qebholliswhiteman.co.uk.

¹ <https://www.gov.uk/government/publications/domestic-abuse-act-2021/domestic-abuse-statutory-guidance-accessible-version>