

DOMESTIC ABUSE ACT 2021 – UPDATE ON HOUSING PROVISIONS

August 2021

The Domestic Abuse Act received royal assent on 29 April 2021 and many of its provisions are now in force. There are six main changes relating to housing. The changes are listed under ‘Headlines’ directly below and explored in more detail from page 2 onwards.

Headlines

1. **Definition of “domestic abuse”:** The Domestic Abuse Act introduces a statutory definition of “domestic abuse” for the first time which includes abusive, coercive and controlling behaviour.
2. **Priority Need for domestic abuse survivors:** Domestic abuse survivors no longer need to prove they are vulnerable to be considered in “priority need”. The Domestic Abuse Act gives domestic abuse survivors automatic priority need. This came into force on 5 July 2021.
3. **Secure tenancies:** This section is not in force yet, but once in force it will require Local Authorities to provide lifetime rather than flexible tenancies when granting tenancies to domestic abuse survivors. It is unclear when this will come into force.
4. **LA duty on accommodation for DA survivors:** Local Authorities are required to plan and provide accommodation-based support for domestic abuse survivors and their children. Guidance on this duty is expected to be published in October 2021.
5. **Free GP letters for legal aid matters:** Anyone applying for legal aid in instances of domestic abuse must not be charged for letters by GPs and other health professionals. This comes into force on 1 October 2021.
6. **Updated Homelessness Code of Guidance:** Chapter 21 of The Code on Domestic Abuse has been rewritten as is effective as of 5 July 2021.

Detailed Update

1. Definition of “domestic abuse”

- Although there was a cross-definition of domestic abuse and violence in the previous Homelessness Code of Guidance, such a definition has never been included in an Act of Parliament.
- Section 1 of the Domestic Abuse Act includes the following definition of “domestic abuse”:

The behaviour of a person (“A”) towards another person (“B”) is “domestic abuse” if—

- (a) A and B are each aged 16 or over and are personally connected to each other, and,*
- (b) the behaviour is abusive.*

“Personally Connected”

Those who are “personally connected” are:

- persons who are or have been married, civil partners, or those in an intimate personal relationship;
- engaged couples;
- those in a civil partnership agreement;
- persons who share / shared a parental relationship (includes parents or those with a parental responsibility) with a child (someone under the age of 18); and
- relatives.

“Abusive” behaviour

- The Act states that:

Behaviour is “abusive” if it consists of any of the following—

- (a) physical or sexual abuse;*
- (b) violent or threatening behaviour;*
- (c) controlling or coercive behaviour;*
- (d) economic abuse;*
- (e) psychological, emotional or other abuse;*

- Importantly, it does not matter whether the behaviour consists of a single incident or a course of conduct.
- Further, economic abuse is defined as:

Any behaviour that has a substantial adverse effect on B’s ability to—

- (a) acquire, use or maintain money or other property, or*
- (b) obtain goods or services.*

- The behaviour will constitute abuse towards the survivor even if it directed at their child:

(5) For the purposes of this Act A's behaviour may be behaviour "towards" B despite the fact that it consists of conduct directed at another person (for example, B's child).

The Explanatory Notes to the Domestic Abuse Act 2021 define the following terms:

- **Controlling behaviour**: *"a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour."*
- **Coercive behaviour**: *"a continuing act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten their victim."*

2. Priority Need for domestic abuse survivors

- Prior to the passage of the Domestic Abuse Act, survivors of domestic abuse applying for homelessness assistance did not have automatic priority need unless they were pregnant or had dependent children. Thus, survivors of domestic abuse had to prove they fulfilled the vulnerability criteria.
- However, s.78 of the Domestic Abuse Act amends s. 189 Housing Act 1996 to include a new category of persons who are in priority need:

(e) a person who is homeless as a result of that person being a victim of domestic abuse.

- This section came into force on 5 July 2021.
- This new category of priority need means that Local Authorities will now be required to carry out a two-part assessment to decide:
 - i. Whether the applicant has experienced "domestic abuse".
 - ii. Whether as a result of this experience, the applicant is "homeless".
- If the applicant has experienced violence or abuse that does not meet the definition of "domestic abuse" in the Act, the Local Authority will assess whether the applicant is 'vulnerable'. This will likely affect applicants who are deemed not to be "personally connected" to their perpetrator.

3. Secure tenancies

- Section 79 of the Domestic Abuse Act 2021¹ requires Local Authorities, when re-housing someone who was previously a secure tenant or an assured tenant of a Private Registered Provider of Social Housing (other than an assured shorthold tenant), and who requires re-housing due to experiencing domestic abuse, to grant a secure lifetime tenancy rather than a flexible tenancy (a fixed-term tenancy).
- This section is not in force yet and it is currently unclear as to when this will come into force.

¹ Section 79 amends Part 4, Housing Act 1985

4. LA duty on accommodation for DA survivors

- This provision places a new duty on Local Authorities in England to provide accommodation-based support to victims of domestic abuse and their children in refuges and other safe accommodation.
- This duty includes a requirement for Local Authorities to assess the need for domestic abuse support in their areas and publish a strategy as to how they intend to provide accommodation to meet the demand.²
- The Government explains this duty as one which requires Local Authorities in England to³:
 - i. Appoint a multi-agency Domestic Abuse Local Partnership Board which it will consult as it performs certain specified functions.
 - ii. Assess the need for accommodation-based domestic abuse support in their area for all victims or their children, including those who come from outside the area.
 - iii. Develop and publish a strategy for the provision of such support to cover their locality, having regard to the needs assessment.
 - iv. Give effect to the strategy (through commissioning / de-commissioning decisions).
 - v. Monitor and evaluate the effectiveness of the strategy.
 - vi. Report back to central government.
 - vii. Require tier two councils (district or borough councils, and London Boroughs) to co-operate with the lead local authority, so far as is reasonably practicable.
 - viii. Require the Secretary of State to produce statutory guidance, having consulted the Domestic Abuse Commissioner, local authorities and such as other persons as considered appropriate.
 - ix. Require local authorities to have regard to the statutory guidance in exercising their functions.
- The Government is due to publish further guidance on this duty in the coming months.

5. Free GP letters for legal aid

- Anyone applying for legal aid in instances of domestic abuse must not be charged for letters by GPs and other health professionals.

6. Updated Homelessness Code of Guidance

- The Homelessness Code of Guidance has been updated in line with the Domestic Abuse Act 2021. Chapter 21 of the Code of Guidance (on domestic abuse) can be accessed at: www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-21-domestic-abuse
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The above is a brief overview of the Domestic Abuse Act 2021. If there are further questions regarding the points raised above, please do not hesitate to get in touch at office@pilc.org.uk

² Section 57 Domestic Abuse Act 2021

³ <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/local-authority-support-for-victims-of-domestic-abuse-and-their-children-within-safe-accommodation-factsheet>