Fighting Domestic Violence - United Kingdom

1. Legal provisions

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# 1.1 What are the relevant statutes and codes?

In the United Kingdom, there is currently no specific offense of "domestic violence" or "domestic abuse." However, UK law recognizes a broad range of behaviors and actions that are considered to be acts of domestic violence or domestic abuse. The relevant legislation on domestic violence/abuse in the United Kingdom is as follows:

**England and Wales**

**Domestic abuse**

[Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017](https://www.legislation.gov.uk/ukpga/2017/18/introduction/enacted)

Legislation that requires the government to lay a report before each House of Parliament setting out the steps required to be taken to enable the United Kingdom to ratify the Istanbul Convention and the timescale within which the government would expect the United Kingdom to be able to ratify the Convention.

[Family Law Act 1996 (as amended by the Domestic Violence, Crime and Victims Act2004)](https://www.legislation.gov.uk/ukpga/1996/27/part/IV)

Legislation that enables victims of domestic abuse to apply to the family courts for civil orders (i.e., non-molestation and occupation orders).

[Section 76, Serious Crime Act  2015](https://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted)

Legislation that criminalizes coercive and controlling behavior by a family member.

[Protection from Harassment Act 1997](https://www.legislation.gov.uk/ukpga/1997/40/section/2A)

Legislation that criminalizes stalking and harassment.

[Sexual Offences Act 2003](https://www.legislation.gov.uk/ukpga/2003/42/contents)

Legislation that criminalizes sexual offenses, including marital rape.

[Domestic Violence, Crime and Victims Act 2004](https://www.legislation.gov.uk/ukpga/2004/28/introduction)

Legislation that amends the Family Law Act 1996, the Protection from Harassment Act 1997, the Protection from Harassment (Northern Ireland) Order 1997 and the Criminal Justice Act 2003 to make provision in respect of various offenses relating to domestic violence including the offense of causing or allowing the death a child or vulnerable adult.

[Domestic Violence, Crime and Victims (Amendment) Act 2012](https://www.legislation.gov.uk/ukpga/2012/4/contents/enacted)

Legislation that amends the Domestic Violence, Crime and Victims Act 2004 to cover cases of causing or allowing a child or vulnerable adult to suffer serious physical harm.

[Children and Young Persons Act 1933](https://www.legislation.gov.uk/ukpga/Geo5/23-24/12) as amended on 3 May 2015, by Part 5 [Section 66 of the Serious Crime Act 2015](https://www.legislation.gov.uk/ukpga/2015/9/section/66)

Legislation that criminalizes neglect of and cruelty toward children.

[Anti-social Behaviour, Crime and Policing Act 2004](https://www.legislation.gov.uk/ukpga/2014/12/section/121/enacted)

Legislation that criminalizes a marriage that is conducted without the true consent of one or both parties either as a result of violence, threats, or coercion.

[Female Genital Mutilation Act 2003](https://www.legislation.gov.uk/ukpga/2003/31/contents)

Legislation that makes it a criminal offense to "excise, infibulate or otherwise mutilate" the whole of any part of a girl's labia majora, labia minora or clitoris.

**Other related legislation**

[s.18, 20 and 47 Offences against the Persons Act 1861](https://www.legislation.gov.uk/ukpga/Vict/24-25/100/contents)

Legislation that criminalizes physical violence against another person, with or without violence (including but not limited to punching, slapping, pushing, kicking, head-butting and hair pulling). The law also covers threats to kill, attempts to choke and false imprisonment.

[s.39 Criminal Justice Act 1988](https://www.legislation.gov.uk/ukpga/1988/33/section/39)

Legislation that criminalizes common assault.

[Malicious Communications Act 1988](https://www.legislation.gov.uk/ukpga/1988/27/section/1) (as amended by the Criminal Justice and Courts Act 2015)

Legislation that criminalizes the posting of intimate images, messages or defamatory/insulting materials ("revenge porn").

[Criminal Justice and Courts Act 2015](https://www.legislation.gov.uk/ukpga/2015/2/introduction/enacted)

Legislation that amends the Malicious Communications Act to make provision in respect of the offense of disclosing private sexual photographs or films with intent to cause distress.

[s.113 Civil Partnership Act 2004](https://www.legislation.gov.uk/ukpga/2004/33/section/113)

Legislation that enables victims of domestic abuse in the context of civil partnerships, to apply to the family courts for civil orders.

**Scotland**

[Domestic Abuse (Scotland) Act 2018](https://www.legislation.gov.uk/asp/2018/5/contents/enacted)

Legislation that makes all domestic abuse toward a partner, whether psychological or physical, a criminal offense.

[Criminal Justice and Licensing (Scotland) Act 2010](https://www.legislation.gov.uk/ukpga/2004/28/contents)

Legislation that criminalizes stalking.

[Abusive Behaviour and Sexual Harm (Scotland) Act 2016](https://www.legislation.gov.uk/asp/2016/22/contents)

Legislation that criminalizes the disclosure of intimate images of another person without their consent.

[Matrimonial Homes (Family Protection) (Scotland) Act 1981](https://www.legislation.gov.uk/ukpga/1981/59)

Legislation that enables victims of domestic abuse in the context of married couples and co-habitees, to apply to the family courts for civil orders (e.g., matrimonial interdict, exclusion order, etc.).

[Domestic Abuse (Scotland) Act 2011](https://www.legislation.gov.uk/asp/2011/13/contents)

Legislation that introduced an additional layer of protection for victims of domestic abuse, namely a domestic abuse interdict (order). Breaching a domestic abuse interdict carries higher penalties and may act as a more significant deterrent.

**Northern Ireland**

[Domestic Violence, Crime and Victims Act 2004](https://www.legislation.gov.uk/ukpga/2004/28/introduction)

English legislation that amends the Family Law Act 1996, the Protection from Harassment Act 1997, the Protection from Harassment (Northern Ireland) Order 1997 and the Criminal Justice Act 2003 to make provision in respect of various offenses relating to domestic violence including the offense of causing or allowing the death a child or vulnerable adult.

[The Family Homes and Domestic Violence (N.I.) Order 1998](https://www.legislation.gov.uk/nisi/1998/1071/contents)

Legislation that allows victims of domestic violence to apply for protective civil orders (non-molestation orders and occupation orders).

[The Protection from Harassment (NI) Order 1997](http://www.legislation.gov.uk/nisi/1997/1180/contents)

Legislation that prohibits the act of harassment.

[Sexual Offences (Northern Ireland) Order 2008](https://www.legislation.gov.uk/nisi/2008/1769/introduction)

Legislation that criminalizes sexual assault and rape.

# 1.2 What is the controlling case law?

*R v R [1992] 1 AC 599*

Determined under English law that it was possible for a man to rape his wife.

*R v Brown* [1993] UKHL 19, [1994] 1 AC 212

Determined that a person cannot "consent" to having anything more than "transient or trifling" injuries inflicted on them. In theory, this case should mean that the "rough sex" defense should not be possible for defendants in the UK, but this defense has been evoked by defendants in the UK in circumstances where a woman has been killed. The use of this defense has resulted in lesser charges of manslaughter — a lighter sentence than murder — being imposed, or the woman's death not being investigated as a crime.[1]It is anticipated that the use of this defense will be banned by the passing into law of the Domestic Abuse Bill ("**Bill**"), which at the time of writing is being considered by the UK Parliament.[2]

*R. v Uddin (Tohel)* [2017] EWCA Crim 1072

Determined that the words "or otherwise" in the definition of a "vulnerable adult" in Section 5(6) of the Domestic Violence, Crime and Victims Act 2004 (describing the main offense under the Act), envisaged a third category of potentially vulnerable adults who were not suffering from an illness, disability or old age, i.e., "battered wives."

*R v Allen* [2017][3]

Defendant was imprisoned after admitting manslaughter, coercive behavior and stalking on the basis that his controlling and abusive behavior had led to his ex-partner's suicide.

*R v Ward* [2018] EWCA Crim 1464

The court identified aggravating factors in relation to false imprisonment and Section 18 of the Offences against the Persons Act 1861 (grievous bodily harm) including: gratuitous degradation of the victim; abuse of power over the victim in his own home; previous violence or threats toward the victim in the context of a series of offenses; and threats made to stop the victim reporting the offending.

*R v Broadhurst* [2019] EWCA Crim 2026

The defendant in this case was cleared of murder, having admitted to manslaughter of his partner after leaving his injured and bleeding partner to die after claiming she was injured during "rough sex." This case has been considered the catalyst for the introduction of a clause in the Bill that bans, in most circumstances, the use of the "rough sex defense," which — as noted above — has been sought to be used as a defense for serious harm.

*R v Cooksey* [2019] EWCA Crim 1410

The defendant was sentenced to six years' imprisonment for, amongst other offenses for which he received concurrent sentences, false imprisonment of his girlfriend, which occurred when the defendant attacked his girlfriend, punching her repeatedly in the ribs and face, and refused to allow her to go to work or leave their apartment without him for the following week. The defendant applied for leave to appeal against his sentence and in refusing the application, the court of appeal noted that, "This court treats more seriously incidents of domestic violence than used to be the case,particularly where it is coupled, as here, with coercive and controlling behavior in a domestic setting*.*"

*R v Challen* [2019] EWCA Crim 916

The court of appeal quashed the defendant's conviction for murder (a wife who killed her husband by striking him multiple times with a hammer). In reaching this decision, the court decided that there was evidence of an abusive relationship and that coercive control was capable of being relevant to the defenses of provocation and of diminished responsibility.

# 1.3 What are the specific parts of the court system that address domestic violence?

Incidents of domestic violence can be addressed by the family courts and the criminal court. The relevant court will be determined by the course of action sought. For example in England, one would apply to the family courts in the event that the victim of domestic violence wished to obtain either: (i) an occupation order, which allows the victim to exclude an abuser from their property or to keep a certain distance from the property; or (ii) a non-molestation order, which prevents an abuser from using or threatening violence, harassing, intimidating, or pestering a victim.

If the abuser breaks one of the above-listed orders, or commits a criminal offense in breach of one of the above-listed laws, the police will investigate the case and pass their evidence to the Crown Prosecution Service (CPS). The CPS will decide if there is enough evidence to charge the abuser with a criminal offense, at which point the case will be heard in either the magistrates court or, for more serious offenses (or if so chosen by the defendant), the crown court.

Domestic abuse cases may also be heard in specialist domestic violence courts in England, Wales and Scotland. These specialist courts were introduced in 2005/2006 to improve the court process for victims of domestic abuse. Total numbers across England, Wales and Scotland are difficult to obtain, but there are over 140 in England and Wales. The specialist courts have specifically trained court personnel, separate entrances/exits and waiting rooms for victims to ensure that they do not come into contact with their attackers.

# 1.4 What are potential causes of action?

As set out in further detail below, there is currently no specific offense of "domestic violence." The law recognizes a broad range of behaviors and actions that are considered to be acts of domestic violence, a non exhaustive list of which is as follows:

Physical abuse

physical violence, with or without weapons, e.g., punching, slapping, pushing, kicking, head-butting and hair pulling (possible criminal offenses: causing common assault, actual bodily harm or grievous bodily harm, wounding)

neglecting, abusing or ill-treating an individual whereupon the act has caused serious physical harm or death (possible criminal offense: serious physical harm or death)

violence resulting in death (possible criminal offenses: murder or manslaughter)

forcing entry into a house (possible criminal offense: using violence to secure entry)

throwing articles, e.g., crockery, even if they miss their target (possible criminal offenses: common assault, actual bodily harm, grievous bodily harm, wounding, criminal damage or threatening behavior)

tying someone up (possible criminal offenses: common assault, actual bodily harm or false imprisonment)

damaging or destroying property or threatening to damage or destroy property (possible criminal offenses: criminal damage, threatening to cause criminal damage or harassment)

harming or threatening to harm a pet (possible criminal offenses: criminal damage, threatening to cause criminal damage or cruelty to animals)

locking someone in a room or house or preventing him or her from leaving (possible criminal offense: false imprisonment)

preventing someone from visiting relatives or friends (possible criminal offense: false imprisonment)

preventing someone from seeking aid e.g., medical attention (possible criminal offense: false imprisonment)

using violence or threatening violence to prevent someone from dressing as they choose or forcing them to wear particular make-up, jewellery and hairstyles (possible criminal offenses: actual bodily harm or harassment)

secret or enforced administration of drugs (possible criminal offenses: common assault, actual bodily harm, grievous bodily harm and administering poison)

Emotional, psychological and mental abuse

neglecting, abandoning or ill-treating a child (possible criminal offense: child cruelty)

pressuring a victim/witness to "drop the case" or not to give evidence (possible criminal offenses: witness intimidation, obstructing the course of justice or conspiracy to pervert the course of justice)

racial abuse (possible criminal offenses: racially aggravated threatening behavior or harassment)

"outing," e.g., sexual orientation or HIV status (possible criminal offenses: harassment, actual bodily harm or blackmail)

Stalking and harassment

offensive/obscene/menacing telephone calls, text messages, letters, emails, social media/online messages (possible criminal offenses: improper use of public telecommunication systems, malicious communications, actual bodily harm, grievous bodily harm or harassment/stalking)

posting of intimate images, messages, or defamatory/insulting material (possible criminal offenses: improper use of public telecommunication systems, malicious communications or harassment/stalking)

excessive contact, e.g., numerous phone calls to check someone's whereabouts, leaving unexpected/unwanted gifts, defamation of character to friends/family employers, etc. (possible criminal offense: harassment/stalking)

following an individual physically, or using online methods such as checking online media activity, or tracking an individual through GPS applications (possible criminal offense: stalking)

constantly visiting an individual (or their friends'/family's) home, workplace or regularly known location (possible criminal offense: stalking)

breaching the conditions of a non-molestation order (possible criminal offense: breach of non-molestation order)

Sexual abuse

intentional or reckless transmission of sexually transmitted infection (possible criminal offense: grievous bodily harm)

enforced sexual activity (possible criminal offense: rape, sexual assault, causing/controlling prostitution for gain and using intimate relationship to force someone into prostitution for gain)

Financial abuse

enforced financial dependence or unreasonably depriving someone of money (possible criminal offense: harassment)

Verbal abuse

persistent verbal abuse, e.g., constant unreasonable criticism (possible criminal offenses: harassment or actual bodily harm)

threatening with an article used as a weapon, e.g., a knife, tool, telephone, chair (possible criminal offenses: threats to kill, common assault or threatening behavior)

threatening to kill someone (possible criminal offenses: threats to kill or harassment)

threats to cause injury (possible criminal offenses: common assault or threatening behavior)

threats to damage seriously or undermine social status (possible criminal offense: blackmail)

Religious and spiritual abuse

ridiculing or insulting religious or spiritual beliefs or preventing the other from practicing their religious or spiritual beliefs (possible criminal offense: coercive and controlling behavior)

Honor-based violence

violence, threats of violence, intimidation coercion or abuse (including psychological, physical, sexual, financial or emotional abuse) that has or may have been committed to protect or defend the honor of an individual, family and/ or community for alleged or perceived breaches of the family and/or community's code of behavior (possible criminal offenses: coercive and controlling behavior, harassment or actual bodily harm)

Forced marriage

being forced to enter a marriage without expressing valid consent (possible criminal offense: forced marriage)

Female genital mutilation (FGM)

removal or mutilation of whole or any part of a girl's external genitalia for nonmedical reasons (possible criminal offense: FGM)

breast flattening (possible criminal offense: child abuse)

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