



# How does the Domestic Abuse Act 2021 support victims fleeing domestic violence?

Justine Compton, Garden Court Chambers

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# Domestic Abuse Act 2021 - introduction

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## WHY WAS LEGISLATION NEEDED?

- No definition
- Many victims unseen, extent of acts committed were not recognised
- Prosecution rates and successful outcomes were low
- Children were not recognised as victims of DA in own right

## AIMS OF THE ACT

- promote awareness - to put abuse at the top of everyone's agenda
- protect and support victims
- tackle perpetrators – new offences: post-separation coercive control, non-fatal strangulation, threats to disclose private sexual images;
- transform the justice response - including by helping victims to give their best evidence

**IN FORCE** – From April 2021 – but see individual sections for commencement dates



# Domestic Abuse Act 2021 – Key housing provisions

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- **Part 1 – ss.1-3 – Definition of Domestic Abuse**
- **s. 78 – Amends Part VII HA 1996**
- **s. 79 – Grant of secure, lifetime tenancies**
- **Draft Statutory Guidance (consultation now closed)** - issued under section 84 of the DAA 2021, to set standards and promote best practice. Aimed at statutory and non-statutory bodies working with victims, perpetrators and commissioning services, including the police, local authorities, and the NHS to increase awareness and inform their response to domestic abuse. It is also aimed at support organisations working with victims.



# Definition of Domestic Violence

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- Historically, No statutory definition - usually defined as physical abuse
- **Yemshaw v LB Hounslow [2011] UKSC 3** – DV to be interpreted as it is used in family proceedings:

*‘domestic violence includes physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly may give rise to the risk of harm’.*

- 2018 Code of Guidance – Chapter 21 – Wider definition of DV used – this is guidance only



# Definition under the Act

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## **Part 1 ss.1-2 (in force 1/10/2021)**

### **s.3 – children as victims (in force January 2022)**

#### **Behaviour is abusive if it consists of:**

- physical or sexual abuse
- violent or threatening behaviour
- controlling or coercive behaviour
- psychological, emotional or other abuse
- economic abuse

#### **s.1(3) Domestic Abuse Act 2021**

- Domestic abuse could be conduct directed at another person, for example the victim's child.

#### **s.1(5) Domestic Abuse Act 2021**



## Definition (continued)

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**Controlling behaviour** - acts designed to make a person subordinate or dependent such as isolating them from sources of support, exploiting their resources, depriving them of resources needed for independence, regulation of the victim's everyday behaviour.

**Coercive behaviour** - an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten

**Economic abuse** - behaviour that has a substantial negative effect on the victim's money, property, goods or other services.



# ‘Domestic’ abuse

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To fall under the ‘domestic’ abuse definition a connection between the perpetrator and victim is required. “Personally connected” means P and V are, or have:

- been married to or been in a civil partnership with each other
- agreed to marry one another or entered into a civil partnership agreement (whether that agreement has ended or not)
- been in an intimate personal relationship
- had a parental relationship to the same child
- Related to each other as defined by section 63(1) of the Family Law Act 1996.
- Definition of DA does not require P and V to be living together.

**(s.2 (1) Domestic Abuse Act 2021)**





# Priority Need

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- **s.189 is amended by s.78 (5)(a) (in force 5 July 2021)**
  - (1) The following have a priority need for accommodation—
    - (a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
    - (b) a person with whom dependent children reside or might reasonably be expected to reside;
    - (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
    - (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.
    - (e) a person who is homeless as a result of that person being a victim of domestic abuse.**

**Amendment finally brings English law into line with Welsh law – Housing (Wales) Act 2014 s.70.**



## Effect of s.78 DAA 2021

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- A person who is homeless as a result of that person being a victim of domestic abuse” has an automatic priority need leading to a main housing duty to accommodate (if not found accommodation under prevention/relief).
- Interim accommodation under s.188 must be offered during the relief stage.
- The Homelessness (Priority Need for Accommodation)(England) Order 2002 is amended to exclude domestic abuse cases from the vulnerability requirement.
- The vulnerability requirement under the order remains for those fleeing violence/threats of violence which are not domestic abuse.
- s.78 (2)(a) amends s.177 HA 1996 to reflect the the wider definition in relation to reasonable to continue to occupy provisions.



# Referral to another LA

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- **s.198 (2) (2ZA), (2A) and (3) are amended by s.78 (6) (in force 5/7/2021)**
- The term domestic violence is replaced by domestic abuse as defined in the Part 1 – 2 DAA 2021
- Referral provisions deal with case where there is no local connection with the LA applied to. Referrals can normally be made to LA where A has a local connection.
- If the Applicant or household member runs the risk of DA in the new area or has experienced DA and it is probable that DA will reoccur, they must not be referred there.



# Grant of secure tenancy

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## **s.79 amends s.81 Housing Act 1985 by adding s.81Z (in force 1/11/2021)**

s.81Z provides that:

- a local authority must grant a secure tenancy that is not a flexible tenancy to a former tenant or joint tenant (holding a qualifying tenancy)
- Where it is satisfied that the person or a member of their household is a victim of DA; and
- Where the new tenancy is granted for reasons connected to that DA
- ‘Qualifying tenancy’ is a ST or AT (NOT AST) granted by private registered provider of social housing, by the Regulator of Social Housing or by a housing trust which is a charity.



# Issues for consideration

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- **No protection and support for migrant women**
- **Statutory duty on local authorities to fund ‘accommodation based’ services does not appear to include refuges.** Nothing in the Act offers financial support to these essential and often life saving support services
- **Will there be gatekeeping in relation to social housing – what evidential requirements will be imposed in terms of:**
  - (a) Probability of violence – threshold remains, how can this be evidenced?
  - (b) Causative issue – leaving due to DA or other reason (relevant to intentionality and offer of secure, life time tenancy)
  - (c) Grant of tenancy – LA must be ‘satisfied’ A is a victim of DA
  - (d) No offer of tenancy to those who have an AST



# Domestic Abuse Act 2021

Marina Sergides, Garden Court Chambers

25 January 2022



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# The Domestic Abuse Act 2021: was it all we had hoped?

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- Section 81ZA does not impose an obligation upon local authorities to offer lifetime secure (non-flexible) tenancies to survivors *irrespective* of the status of their previous tenancy. It does not amend the way in which local authorities discharge their homelessness duties towards homeless applicants generally under Part VII of the 1996 Act.
- Confusion caused by Government ‘Fact Sheets’ – particularly those relating to the ‘Bill’ (albeit updated in November 2021). They refer to local authorities offering secure tenancies to survivors of domestic abuse in very broad terms, e.g <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/secure-tenancies-and-victims-of-domestic-abuse-factsheet>
- In 2018/19, over 5,000 (1.92%) of all new social housing lettings were to existing social tenants who gave ‘domestic abuse’ as the main reason they left their previous social home. <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/secure-tenancies-and-victims-of-domestic-abuse-factsheet>



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Section 81ZA will have effect only until para 4 of schedule 7 to the Housing and Planning 2016 Act is brought into force. Schedule 7 to the 2016 Act, when enacted, will phase out life-time secure tenancies such that all new tenancies granted by LA will be for fixed terms.

## Note:

- The Housing and Planning Act 2016 includes a power for the Secretary of State to prescribe in regulations the circumstances in which a local authority may still grant secure (non-flexible) lifelong tenancies.
- The Secure Tenancies (Victims of Domestic Abuse) Act 2018 seeks to amend Schedule 7 to the Housing and Planning Act to require local housing authorities to grant secure (non-flexible) tenancies to survivors who have a qualifying tenancy.
- The Housing and Planning Act 2016 and the Secure Tenancies (Victims of Domestic Abuse) Act 2018 are not in force and there is no commencement date. See Explanatory Notes, Chapter 17 [https://www.legislation.gov.uk/ukpga/2021/17/pdfs/ukpgaen\\_20210017\\_en.pdf](https://www.legislation.gov.uk/ukpga/2021/17/pdfs/ukpgaen_20210017_en.pdf)





# Joint Tenancies

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- A joint tenant can terminate the tenancy by serving a Notice to Quit on the landlord. The DAA does not include a provision precluding the NtQ from taking affect where the remaining joint tenant is a victim of DA. As set out previously, a survivor is not guaranteed a 'like for like' tenancy.
- The transfer of a tenancy from joint to sole names can be a long process under current legislation. A welcome change would have been for this process to have been streamlined, making it easier for survivors to transfer tenancies into their names.



# Does the DAA create space for a survivor to have a greater say?

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Not, in any meaningful way:

**Local connection for the purposes of Part VII HA 1996 (s.199)** “*A person has a local connection with the district of a local housing authority if he has a connection with it— (a)because he is, or in the past was, normally resident there, and that residence is or was of his own choice, (b)because he is employed there, (c)because of family associations, or (d)because of special circumstances*”. See **s.198** for referral requirements.

In *NJ v Wandsworth London Borough Council* [2013] EWCA Civ 1373, the Court of Appeal held that accommodation at a women’s refuge *could* constitute residents of a person’s ‘*own choice*’ for the purposes of building a local connection.

By contrast, under Part VI, see *R (on the Application of HA) v London Borough of Ealing* [2015] EWHC 2375 (Admin) where the Ealing’s allocation scheme, that disqualified applicants that had not been resident in the borough for the last five years, was discriminatory (although this is not expressly set out in Part VI).



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## Suitability

The decision as to the suitability of accommodation is for the local authority (section 206 HA 1996). Relevant to that determination is where the accommodation is located (s.208 and Homelessness (Suitability of Accommodation) (England) Order 2012, SI 2012/2601 art, 2).

**Paragraph 17.6 of the Homelessness Code of Guidance** states ...*'Account will need to be taken of any social considerations relating to the applicant and their household that might affect the suitability of accommodation, including any risk of violence, racial or other harassment in a particular locality. Where domestic violence or abuse is involved and the applicant is not able to stay in the current home, housing authorities may need to consider the need for alternative accommodation whose location can be kept a secret and which has security measures and staffing to protect the occupants.'* (see also chapter 21, para 16.40 -16.41).

**See also paras 21.41 – 21.44** <https://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-21-domestic-abuse>.

When applying the suitability provisions/guidance, local authorities often place survivors far away from their support networks without regard to where a *survivor feels safe* – which may be in a different area of the same borough. See **SM v Waltham Forest LBC**, County Court at Central London, 23 June 2020 (Legal Action Group, November 2020 Edition).



# Reciprocal arrangements

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- Generally a positive – certainly gives survivors a choice as to where they want/need to live.
- Reciprocal arrangements entered into by local authorities and registered housing providers . In London, the Pan-London Housing Reciprocal is operated by Safer London.
- Such schemes operate to allow local authorities to make direct offers to survivors of DA – arguably avoiding the need to make a homelessness application under Part VII. Survivors will provide a list of boroughs that they would live in/feel safe in.
- Pan reciprocal arrangements do not have statutory footing and remain somewhat of an enigma. They must, therefore, be operated within a borough’s Allocation Scheme, although many schemes do not make reference to them.
- Local authorities often preclude survivors from being considered for under Pan-London if they make a homelessness application. This is potentially challengeable.
- Pan London has currently stopped taking referrals – which gives some idea of the demand.



# The DAA does assist those who have NRPF?

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- The Housing Act 1996 provides that people from abroad are only entitled to homelessness assistance if they are eligible (s.185, s.186 and s.187 of the HA 1996). The rules are complex and outside of this paper. In summary, subject to some exceptions, those who have 'No Recourse to Public Funds' are not eligible for housing/homelessness assistance/benefits.
- Migrants with many different types of visa or leave have a 'no recourse to public funds' condition attached. Student or work visas generally do not allow access to public funds. Those who have no valid leave in the UK, such as overstayers and those who are appeal rights exhausted, have no recourse to public funds.
- A huge disappointment and a lost opportunity. Pragna Patel will talk more about this in her pre-recorded talk.



# Thank you

020 7993 7600

info@gclaw.co.uk

@gardencourtlaw



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