



# Abusive Behaviour and Sexual Harm (Scotland) Act 2016

2016 asp 22

## PART 1

### ABUSIVE BEHAVIOUR

#### *Abusive behaviour towards partner or ex-partner*

#### **1 Aggravation of offence where abuse of partner or ex-partner**

- (1) This subsection applies where it is—
  - (a) libelled in an indictment or specified in a complaint that an offence is aggravated by involving abuse of the partner or ex-partner of the person committing it, and
  - (b) proved that the offence is so aggravated.
- (2) An offence is aggravated as described in subsection (1)(a) if in committing the offence—
  - (a) the person intends to cause the partner or ex-partner to suffer physical or psychological harm, or
  - (b) in the case only of an offence committed against the partner or ex-partner, the person is reckless as to causing the partner or ex-partner to suffer physical or psychological harm.
- (3) It is immaterial for the purposes of subsection (2) that the offence does not in fact cause the partner or ex-partner physical or psychological harm.
- (4) Evidence from a single source is sufficient to prove that an offence is aggravated as described in subsection (1)(a).
- (5) Where subsection (1) applies, the court must—
  - (a) state on conviction that the offence is aggravated as described in subsection (1)(a),
  - (b) record the conviction in a way that shows that the offence is so aggravated,
  - (c) take the aggravation into account in determining the appropriate sentence, and

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*Status: This is the original version (as it was originally enacted).*

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- (d) state—
  - (i) where the sentence imposed in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
  - (ii) otherwise, the reasons for there being no such difference.
- (6) For the purposes of this section, a person is a partner of another person if they are—
  - (a) spouses or civil partners of each other,
  - (b) living together as if spouses or civil partners of each other, or
  - (c) in an intimate personal relationship with each other,and the references to a person’s ex-partner are to be construed accordingly.
- (7) In this section—
  - “cause” includes contribute to causing (and “causing” is to be construed accordingly),
  - “psychological harm” includes fear, alarm or distress.