

DOMESTIC ABUSE (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part 1 – Offence as to Domestic Abuse

Presumption, alternative and penalty

Section 8 - Alternative available for conviction

46. **Section 8(1)** provides that where a charge is brought for the offence at section 1 of the Act, but the court is not satisfied that the accused committed the offence, it is possible to convict the accused of a specified alternative offence where it is proved (to the normal criminal standard of proof) that the accused committed the alternative offence.
47. **Section 8(2)** provides that the alternative offences are the offence of threatening or abusive behaviour under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and the offence of stalking under section 39 of that same Act.
48. The offence of threatening or abusive behaviour may be proven where the court is satisfied that an accused engaged in at least one act that amounted to threatening or abusive behaviour, but it is not proven that the accused engaged in a course of behaviour against the complainer. The offence of stalking may be proven where the court is satisfied that an accused engaged in a course of behaviour which caused the victim to suffer fear or alarm, but it is not proven, for instance, that the accused was the partner or ex-partner of the complainer.
49. This section sits alongside the provision for a common law alternative to a statutory offence that is found in paragraph 14 of schedule 3 of the 1995 Act.