



Domestic Abuse (Scotland) Act 2018

2018 asp 5

PART 1

OFFENCE AS TO DOMESTIC ABUSE

Evidence, aggravation and defence

4 Evidence of impact on victim

- (1) The commission of an offence under section 1(1) does not depend on the course of behaviour actually causing B to suffer harm of the sort mentioned in section 1(2).
- (2) The operation of section 2(2)(b) does not depend on behaviour directed at someone actually having on B any of the relevant effects set out in section 2(3).
- (3) Nothing done by or mentioned in subsection (1) or (2) prevents evidence from being led in proceedings for an offence under section 1(1) about (as the case may be)—
 - (a) harm actually suffered by B as a result of the course of behaviour, or
 - (b) effects actually had on B of behaviour directed at someone.

5 Aggravation in relation to a child

- (1) This subsection applies where it is, in proceedings for an offence under section 1(1)—
 - (a) specified in the complaint or libelled in the indictment that the offence is aggravated by reason of involving a child, and
 - (b) proved that the offence is so aggravated.
- (2) The offence is so aggravated if, at any time in the commission of the offence—
 - (a) A directs behaviour at a child, or
 - (b) A makes use of a child in directing behaviour at B.
- (3) The offence is so aggravated if a child sees or hears, or is present during, an incident of behaviour that A directs at B as part of the course of behaviour.
- (4) The offence is so aggravated if a reasonable person would consider the course of behaviour, or an incident of A's behaviour that forms part of the course of behaviour, to be likely to adversely affect a child usually residing with A or B (or both).

Status: This is the original version (as it was originally enacted).

- (5) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child—
- (a) has ever had any—
 - (i) awareness of A’s behaviour, or
 - (ii) understanding of the nature of A’s behaviour, or
 - (b) has ever been adversely affected by A’s behaviour.
- (6) Evidence from a single source is sufficient to prove that the offence is so aggravated.
- (7) Where subsection (1) applies, the court must—
- (a) state on conviction that the offence is so aggravated,
 - (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
 - (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.
- (8) Each of subsections (2) to (4) operates separately along with subsection (5), but subsections (2) to (4) may be used in combination along with subsection (5).
- (9) Nothing in subsections (2) to (5) prevents evidence from being led about—
- (a) a child’s observations of, or feelings as to, A’s behaviour, or
 - (b) a child’s situation so far as arising because of A’s behaviour.
- (10) In subsections (4) and (5), the references to adversely affecting a child include causing the child to suffer fear, alarm or distress.
- (11) In this section, the references to a child are to a person who—
- (a) is not A or B, and
 - (b) is under 18 years of age.

6 Defence on grounds of reasonableness

- (1) In proceedings for an offence under section 1(1), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances.
- (2) That is to be regarded as shown if—
- (a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (1), and
 - (b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (1).