



Domestic Abuse (Scotland) Act 2018

2018 asp 5

PART 1

OFFENCE AS TO DOMESTIC ABUSE

Presumption, alternative and penalty

7 **Presumption as to the relationship**

- (1) In proceedings for an offence under section 1(1), the matter of B being A's partner or ex-partner is to be taken as established—
- (a) according to the stating of the matter in the charge of the offence in the complaint or indictment, and
 - (b) unless the matter is challenged as provided for in subsection (2).
- (2) The matter is challenged—
- (a) in summary proceedings, by—
 - (i) preliminary objection before the plea is recorded, or
 - (ii) later objection as the court allows in special circumstances,
 - (b) in proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of the Criminal Procedure (Scotland) Act 1995.

Commencement Information

II [S. 7](#) in force at 1.4.2019 by [S.S.I. 2018/387](#), [reg. 2](#) (with [reg. 4](#))

8 **Alternative available for conviction**

- (1) In proceedings for an offence under section 1(1), A may be convicted of an alternative offence if the facts proved against A—
- (a) do not amount to the offence under section 1(1), but
 - (b) do amount to the alternative offence.

Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse (Scotland) Act 2018, Cross Heading: Presumption, alternative and penalty. (See end of Document for details)

- (2) An alternative offence as referred to in subsection (1) is one or other of these—
- (a) an offence under section 38(1) (threatening or abusive behaviour) of the Criminal Justice and Licensing (Scotland) Act 2010,
 - (b) an offence under section 39 (offence of stalking) of that Act.

Commencement Information

I2 [S. 8](#) in force at 1.4.2019 by [S.S.I. 2018/387](#), [reg. 2](#) (with [reg. 4](#))

9 Penalty for offence under section 1(1)

A person who commits an offence under section 1(1) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).

Commencement Information

I3 [S. 9](#) in force at 1.4.2019 by [S.S.I. 2018/387](#), [reg. 2](#) (with [reg. 4](#))

Changes to legislation:

There are currently no known outstanding effects for the Domestic Abuse (Scotland) Act 2018,
Cross Heading: Presumption, alternative and penalty.