



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.

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.
- (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.

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).