



# 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

*Changes to legislation: There are currently no known outstanding effects for the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Cross Heading: Abusive behaviour towards partner or ex-partner. (See end of Document for details)*

- (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 <sup>F1</sup>... 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.

#### Textual Amendments

**F1** Words in s. 1(6)(b) repealed (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\), s. 15\(2\), sch. para. 11\(2\)](#); [S.S.I. 2018/387, reg. 2 \(with reg. 7\)](#)

#### Commencement Information

**I1** S. 1 in force at 24.4.2017 by [S.S.I. 2017/93, reg. 2 \(with reg. 3\)](#)

### [<sup>F2</sup>1A Presumption as to the relationship

- (1) In proceedings for an offence that is aggravated as described in section 1(1)(a), the matter of a person being another person'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 1995 Act.]

#### Textual Amendments

**F2** S. 1A inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\), s. 15\(2\), sch. para. 11\(3\)](#); [S.S.I. 2018/387, reg. 2 \(with reg. 7\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Cross Heading: Abusive behaviour towards partner or ex-partner.