

Domestic Abuse (Scotland) Act 2018

Please note that sheriffs and senators have access to the Domestic Abuse Resource Kit, which provides further information on the 2018 Act and coercive control, including an explanation of the new legislation, flowcharts on the offence itself and the aggravation in the relation to a child, as well as interviews with experts discussing issues arising from the new crime, its investigation and prosecution, and during the court process.

Law

[Domestic Abuse \(Scotland\) Act 2018](#)

Section 1 Abusive behaviour towards partner or ex-partner

(1) A person commits an offence if—

(a) the person ("A") engages in a course of behaviour which is abusive of A's partner or ex-partner ("B"), and

(b) both of the further conditions are met.

(2) The further conditions are—

(a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm,

(b) that either—

(i) A intends by the course of behaviour to cause B to suffer physical or psychological harm, or

(ii) A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

(3) In the further conditions, the references to psychological harm include fear, alarm and distress.

Section 2 What constitutes abusive behaviour

(1) Subsections (2) to (4) elaborate on section 1(1) as to A's behaviour.

(2) Behaviour which is abusive of B includes (in particular) —

(a) behaviour directed at B that is violent, threatening or intimidating,

(b) behaviour directed at B, at a child of B or at another person that either—

(i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or

(ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).

(3) The relevant effects are of—

(a) making B dependent on, or subordinate to, A,

(b) isolating B from friends, relatives or other sources of support,

(c) controlling, regulating or monitoring B's day-to-day activities,

(d) depriving B of, or restricting B's, freedom of action,

(e) frightening, humiliating, degrading or punishing B.

(4) In subsection (2) —

(a) in paragraph (a), the reference to violent behaviour includes sexual violence as well as physical violence,

(b) in paragraph (b), the reference to a child is to a person who is under 18 years of age.

Section 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.

Section 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).

(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.

Section 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).

Section 10 Meaning of references to behaviour

(1) Subsections (2) to (4) explain what is meant by the references to behaviour in this Part.

(2) Behaviour is behaviour of any kind, including (for example) —

(a) saying or otherwise communicating something as well as doing something,

(b) intentionally failing—

(i) to do something,

(ii) to say or otherwise communicate something.

(3) Behaviour directed at a person is such behaviour however carried out, including (in particular) —

(a) by way of conduct towards property,

(b) through making use of a third party,

as well as behaviour in a personal or direct manner.

(4) A course of behaviour involves behaviour on at least two occasions.

Section 11 Meaning of partner and ex-partner

(1) Subsections (2) and (3) describe who is a person's partner or ex-partner as referred to in this Part.

(2) Someone is a person's partner if they are—

(a) spouses or civil partners of each other,

(b) living together as if spouses of each other, or

(c) in an intimate personal relationship with each other.

(3) Whether someone is a person's ex-partner is to be determined accordingly.

Section 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.

Section 3 Extra-territorial jurisdiction

(1) An offence under section 1(1) can be constituted by a course of behaviour engaged in by A even if the course of behaviour occurs wholly or partly outside the United Kingdom.

(2) If the course of behaviour occurs wholly outside the United Kingdom—

(a) A may be prosecuted, tried and punished for the offence—

(i) in a sheriff court district in which A is apprehended or in custody, or

(ii) in a sheriff court district that is determined by the Lord Advocate,

as if the offence has been committed entirely in that district,

(b) the offence is, for all things incidental to or consequential on trial and punishment, deemed to have been committed entirely in that district.

(3) Subsections (1) and (2) apply only if A, when the course of behaviour occurs—

(a) is habitually resident in Scotland, or

(b) is a UK national.

(4) "UK national" means someone who is, as referred to in the British Nationality Act 1981—

(a) a British citizen,

(b) a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, or

(c) a British subject or a British protected person.

Corroboration

1. See the chapter on Corroboration: Omnibus/Composite charges.

2. The question of corroboration of a charge under [section 1](#) was discussed in a first instance opinion ([DF v HM Advocate \[2024\] HCJ 5, 2025 SLT 22](#)). The question was whether, where there was corroborated evidence, accepted by the jury, of some parts

of the libel (at least two episodes of abuse at a minimum) the jury would be entitled to convict in respect of other uncorroborated parts of the libel, in particular where, as in this case, those were allegations of sexual crime and thus of a different character. The issue was crystallised as relating to what was required to prove a "course of behaviour" for the purpose of the statutory charge and whether individual crimes making up the alleged course of behaviour required each to be individually corroborated.

Lord Matthews said at paragraphs [38] and [39]:

"[38]...If, once two incidents of behaviour are corroborated, parts of a charge which are otherwise uncorroborated must fall away if they are of a different type, then the 2018 Act is nothing but a cosmetic change.

[39] Drawing all this together, in my opinion the acceptance by the jury on corroborated evidence that two episodes of the abusive behaviour had been proved would suffice to warrant a conviction of the new offence. Whether they could also convict of uncorroborated elements would depend on whether or not they were satisfied that those uncorroborated elements formed part of the same course of behaviour. There requires to be some sort of nexus or link between the various elements otherwise they would be simply separate incidents and not part of a course of behaviour. Whether or not that link exists will depend on the evidence in each case and may not be capable of delineating ab ante, although it might be found if the jury were satisfied, for example, that there was a continuity of purpose in that the accused intended or was reckless as to whether his behaviour, whatever it was, caused the complainer to suffer physical or psychological harm, in other words if the accused was pursuing the sort of campaign described in *McAskill* [[McAskill v HM Advocate](#) [2016] HCJAC 64, 2016 SCCR 402]. In my opinion it is not necessary that the individual incidents require to be of the same kind or of a similar kind to the full extent required by Moorov. That is part of the law of evidence rather than a substantive requirement of an offence. It will always be open to an accused person to submit that there was no case to answer where the evidence did not support a course of conduct"

3. Section 1 and the question of corroboration has now been examined by the appeal court in [CA v HM Advocate](#) [2022] HCJAC 33. The court provides a succinct synopsis of the offence at paragraphs [2] to [4]. The sheriff had directed that it was

the course of behaviour which required to be proved on corroborated evidence, but the appellant argued that each of 13 averments of abusive conduct labelled in a single charge required corroboration. The appellant founded on decisions in [Dalton v HM Advocate \[2015\] HCJAC 24, 2015 SCCR 125](#), [Spinks v Harrower \[2018\] HCJAC 37, 2018 JC 177](#), [Wilson v HM Advocate \[2019\] HCJAC 36, 2019 SCCR 273](#) and [Rysmanowski v HM Advocate \[2019\] HCJAC 88, 2020 JC 84](#).

The court endorsed the general approach taken by Lord Matthews in [DF](#), but did not refer to a requirement for a nexus between uncorroborated elements and corroborated elements in stating:

“[10] That the rule in [Spinks v Harrower](#) does not apply to offences under the 2018 Act is a necessary consequence of the way in which that Act is framed. The Act specifically creates a new offence which, in the words of the Lord Justice General, constitutes “a separate crime known as a course of conduct”. **It is the course of behaviour which is the core of the offence, and it is thus the course of behaviour – in other words proof of behaviour “on at least” two occasions - which must be established by corroborated evidence. Once there is corroborative evidence of this kind it is open to the jury to determine that other incidents equally form part of the course of conduct, even though spoken to by only one witness.** Where the commission of a course of conduct is the core element of an offence, it is the proof of a course of conduct which constitutes the relevant essential element of the offence.

[11] In these circumstances the “course of behaviour” may be equated with the evidential position which applies in relation to a single charge of assault: in the case of a single episode of assault, there is no need for every element of the libel to be corroborated. In the same way that one must look for corroboration of a single charge of assault, without demanding corroboration of every individual element thereof, in a case such as this it is the course of behaviour which must be established, without any requirement for corroboration of every single element of that course of behaviour. **There is one single offence which lies in a course of conduct.”**

Special defences and DASA (consent and self-defence)

[Section 1](#) charges often contain within them allegations of assault, threatening or abusive behaviour, rape or other sexual assaults. There is as yet no decided appeal court decision on the appropriateness of these special defences in a section 1 charge.

There is appeal court authority that a special defence of self-defence has no relevance to a charge under [section 38\(1\) of the Criminal Justice and Licensing \(Scotland\) Act 2010](#) (*Urquhart v HM Advocate* [2015] HCJAC 101, 2016 JC 93 at paragraph [15], approved in *Thomson v HM Advocate* 2021 JC 109 at paragraph [24]). In *Urquhart*, the Court reasoned that the statutory defence of reasonableness is broader than self-defence. When acting in self-defence a person is likely to intend to cause fear or alarm, a component part of the statutory offence, so that it cannot be an answer to it. Whilst the point does not appear to have been directly considered in the [section 38](#) caselaw, it may be that self-defence remains relevant to any alternative verdict of common law assault whether under [section 38](#), [section 39](#), or [section 1 DASA](#).

Nor is there any appeal court decision on the appropriateness of a special defence of consent to rape or sexual assault included within a [section 1](#) charge. Most often the charge libels that the act took place without the complainer's consent. Under [section 78](#) and [section 288C\(4\)](#) of the Criminal Procedure (Scotland) Act 1995, where the court is satisfied there appears to be a substantial sexual element to the commission of the offence, and an accused intends to rely on a defence of consent, notice of consent will be required. In such circumstances directions on consent and any reasonable belief in consent that arises would appear to be relevant. There may be some doubt whether consent is always a defence to a sexual act libelled under [section 1 DASA](#) where it is libelled as a sexual act irrespective of consent, but until such time as there is an appeal court decision, the point remains uncertain.

Possible form of direction on Domestic Abuse (Scotland) Act 2018

Charge [] is a charge of engaging in a course of abusive behaviour towards a partner or ex-partner, under [section 1 of the 2018 Act](#).

Nature of the relationship

[One of the following directions should be given as appropriate:]

- Where it is not in dispute that the accused and complainer were, or had been, partners.

This offence applies only to abusive behaviour towards a partner or ex-partner. In this case there has been no challenge and so it is established that the accused and the complainer were partners/ex-partners at the time specified.

- **Where it is in dispute that the accused and complainer were partners or ex-partners.**

This offence applies only to abusive behaviour towards a partner or ex-partner. In this case the accused does not accept that he/she/they and the complainer were partners or ex-partners.

[Judges might refer, briefly, to the evidence in this connection]

The law defines partners as: spouses; civil partners; people living together as spouses; and people who are in an intimate relationship with each other. What is "intimate" will depend on all the circumstances but a relationship need not be sexual for it to be intimate.

An ex-partner is someone who was previously in such a relationship with the accused but was not at the time specified.

You will need to decide whether you are satisfied that the accused and complainer were partners/ex-partners at the time specified.

The behaviour

The accused must have engaged in a course of abusive behaviour. There is no limit to what can be "behaviour". Behaviour can include things said and done, but also failing to do or say something.

Behaviour can be directed at a person in many ways, whether directly or indirectly, and can include using somebody else to carry out the behaviour as well as directing behaviour towards property.

The behaviour must be abusive

Whatever form it takes, the behaviour must have been abusive which includes behaviour directed at the complainer that is violent, threatening, or intimidating. Violent behaviour includes both physical and sexual violence.

Abusive behaviour also includes behaviour directed at the complainer, at the complainer's child or at another person which has as its purpose (or among its purposes) at least one of the following effects:

[Judges may omit reference to those behaviours which do not apply]

- (a) making the complainer dependent on, or subordinate to, the accused
- (b) isolating the complainer from friends, relatives or other sources of support
- (c) controlling, regulating or monitoring the complainer's day-to-day activities
- (d) depriving the complainer of, or restricting, his/her/their freedom of action
- (e) frightening, humiliating, degrading or punishing the complainer

Even if that was not the *purpose* of the behaviour, the behaviour would still be abusive if a reasonable person would think that the accused's conduct was likely to have that effect.

These are all forms of abusive behaviour but they do not provide a complete list of abusive behaviour. It is for you to decide whether the behaviour in question was, in fact, abusive.

A course of behaviour

I mentioned that this offence relates to "a course" of behaviour. A course of behaviour involves abusive behaviour on at least two occasions. It is for you to decide in the particular circumstances whether the incidents amount to a course of abusive behaviour.

Harm

A course of abusive behaviour covers a broad range of conduct and so the law requires that you must consider two final matters.

First, you must be satisfied that a reasonable person would think that the course of behaviour (as a whole) was likely to cause the complainer to suffer physical harm or psychological harm. Psychological harm includes causing the complainer fear, alarm or distress. It is not necessary that the complainer actually suffered such harm, but it is necessary that the behaviour was such that a reasonable person would consider it likely to cause physical or psychological harm.

Secondly, you must be satisfied that the accused intended, by the course of behaviour, to cause the complainer to suffer physical or psychological harm, **or**, was reckless as to whether such harm would result. "Intended" refers to what the accused meant to do, what he/she/they was aiming to achieve.

A person is reckless as to whether the course of behaviour would cause the complainer such harm if they failed to think about, or were indifferent to, whether the behaviour would have that result.

Whether the accused acted intentionally or recklessly is something to be inferred from what is proved to have been said and/or done.

Corroboration

Both the commission of the crime and that the accused committed it must be proved by corroborated evidence, meaning evidence from more than one source. The other elements of the charge are descriptive only, to give the accused fair notice of how the crime is said to have been committed. They do not need to be corroborated. That the accused acted intentionally [or recklessly] does not need corroboration.

The course of behaviour must be proved by corroborated evidence. At least two incidents forming the course of abusive behaviour must be proved by corroborated evidence. Provided you are satisfied that two incidents are proved by corroborated evidence, you can convict of other incidents in the charge which are spoken to by a single witness if you are satisfied that those incidents were part of the same course of abusive behaviour, as I have defined it.

[NOTE – There may be cases where corroboration could be found by mutual corroboration from the evidence of another complainer, or there may be a basis for mutual corroboration to be found in the manner described in [Rysmanowski v HM Advocate](#) [2019] HCJAC 88, 2020 JC 84 at paragraph [21]. See also the Corroboration: Omnibus/ Composite charges chapter. Appropriate directions on mutual corroboration would be required and may in some cases replace the sentence "At least two incidents forming the alleged course of behaviour must be proved by evidence coming from at least two sources."]

[One or more of the following directions should be given where relevant:]

- **Where the complainer is an essential witness**

[In cases in which there is sufficient evidence independent of the complainer, the complainer may not be an essential witness, in which case the following direction may not be necessary, or may need to be adapted.]

You do not need to find the complainer's evidence to be credible and reliable in every detail but before you could convict the accused on this charge you would have to regard the complainer's evidence as credible and reliable in its essentials: namely that the accused committed the crime.

In deciding whether you accept the complainer's evidence about this you should have regard to the other evidence in the case.

- **Where there is evidence of distress**

[If anything more elaborate is required, reference can be made to "Corroboration: Evidence of Distress" in Part II of the Jury Manual.]

Corroboration for the complainer's account can come from the evidence of others that she was distressed afterwards, provided her distress was genuine, was caused at least in part by what she said happened, and was not wholly due to other extraneous factors.

- **Where there is evidence of a *de recenti* statement in the context of distress**

When a complainer gives an account to a witness shortly after the event when exhibiting such distress, it enhances and strengthens the corroborative effect of evidence of distress.

- **Other sources of corroboration**

[Where appropriate, judges may identify other sources of circumstantial evidence that may corroborate the complainer's account- see the chapter on "Corroboration generally/Corroboration in rape etc.".]

Where the defence lead evidence that the course of behaviour was reasonable in the particular circumstances

The accused's evidence [*Or: specify the evidential basis*] was that the course of behaviour was reasonable in the particular circumstances. You will have to decide if you accept that evidence, and if it suggests that the course of behaviour was reasonable. If you conclude that the accused's behaviour was reasonable in the circumstances, then that is a defence to the charge and you must acquit.

The Crown has to prove beyond reasonable doubt that the course of behaviour was not reasonable in the particular circumstances.

In deciding whether the course of behaviour was reasonable in the particular circumstances, you should consider all of the evidence including: the nature of the behaviour; its frequency; the effect of the behaviour on the complainer; the circumstances in which the behaviour arose; and any explanation given by the accused for the behaviour.

Where a child aggravation is libelled

You will see that, at the end of the charge, it is said that the offence is aggravated by reason of involving a child. That is known as an aggravation which, if proved, makes an offence more serious. You will first have to decide whether you are satisfied that the accused committed the offence as I have defined it. If you acquit the accused of the offence, you do not need to consider the aggravation. If you decide to convict of the offence, you then consider whether the aggravation applies.

A child is a person who was under 18 at the time. The aggravation is proved if you are satisfied that:

[Refer to one or more of the statutory criteria as relevant:]

- the accused directed behaviour at a child at any time in the commission of the offence;
- the accused made use of a child in directing behaviour at the complainer at any time in the commission of the offence;
- a child saw, or heard, or was present during, an incident of behaviour that the accused directed at the complainer as part of the course of behaviour set out in the charge;
- a reasonable person would consider the course of behaviour, or an incident of the accused's behaviour that forms part of that course of behaviour, to be likely to adversely affect a child who usually resides with the complainer or the accused, or both. That includes causing the child to suffer fear, alarm or distress or adversely affecting the child in some other way.

There does not need to be evidence that a child was actually aware of the accused's behaviour, or understood the nature of the behaviour or was adversely affected by it.

Finally, evidence from a single source is sufficient to prove that the offence is aggravated in this way. There is no need for corroboration.

So, if you are satisfied that the offence was committed, you then consider whether this aggravation applies. If you are satisfied that the aggravation applies, then you would convict of the charge and the aggravation. If you were not satisfied of the aggravation, you would convict the accused of the charge and delete the aggravation.

Additional directions

[One or more of the following directions on "myths" may be appropriate:]

- A background of domestic abuse direction.
- A delayed reporting direction (section 288DA).
- An absence of physical resistance or physical force direction (section 288DB).
- A lack of emotion direction.

Summary

For the Crown to prove this charge, you must be satisfied that:

1. *[Only where in issue:]* at the time of the behaviour, the accused and complainer were partners, or ex-partners;
2. the accused engaged in a course of behaviour which was abusive of the complainer;
3. a reasonable person would consider it likely that the behaviour would cause the complainer to suffer physical or psychological harm;
4. the accused either intended the course of behaviour to cause the complainer to suffer such harm, or was reckless as to whether it would do so;
5. *[Only where raised:]*
that the accused's behaviour was not reasonable in the circumstances;
6. *[Only where applicable:]*
that the offence is aggravated by reason of involving a child.

Where alternative verdicts require to be considered

Now, members of the jury, if you are not satisfied that the Crown has proved charge [x], that is not the end of the matter. You will then require to consider whether you are satisfied that the accused behaved in a manner which constitutes one of these other offences.

[Thereafter, if appropriate, the judge should give a direction in respect of the available alternative offences which might include:

- *an offence under [section 38\(1\) of the Criminal Justice and Licensing \(Scotland\) Act 2010](#) (threatening or abusive behaviour)*
- *an offence under [section 39 of the Criminal Justice and Licensing \(Scotland\) Act 2010](#) (offence of stalking)*
- *An alternative common law offence e.g. assault; see the [Criminal Procedure \(Scotland\) Act 1995, schedule 3 at paragraph 14.](#)*