

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 5: Protection of Children and Others

Commentary on Sections

Section 76: Controlling or coercive behaviour in an intimate or family relationship

312. This section provides for a new offence criminalising controlling or coercive behaviour in an intimate or family relationship where the behaviour has a serious effect on the victim (*subsection (1)*). The new offence would not apply where the behaviour in question is perpetrated by a parent, or a person who has parental responsibility, against a child under 16 (*subsection (3)*). This is because the criminal law, in particular the child cruelty offence in section 1 of the Children and Young Persons Act 1933 as amended by section 66 of the Act, already covers such behaviour. *Subsections (8) to (10)* provide for a limited defence where the accused believes he or she was acting in the best interests of the victim and can show that in the particular circumstances their behaviour was objectively reasonable. The defence would not be available where a victim has been caused to fear violence (as opposed to being seriously alarmed or distressed). This defence is intended to cover, for example, circumstances where a person was a carer for a mentally ill spouse, and by virtue of his or her medical condition, he or she had to be kept at home or compelled to take medication, for his or her own protection or in his or her own best interests. In this context, the person's behaviour might be considered controlling, but would be reasonable under the circumstances. The evidential burden will apply to the defence, that is, it will be enough for a defendant to produce sufficient evidence for the matter to be considered by the jury; it would then be for the prosecution to demonstrate to the criminal standard of proof, namely beyond reasonable doubt, that the defence has not been made out. By virtue of *subsection (11)*, and the transitional provision in section 86(14)(e), the maximum penalty on summary conviction of the offence will be six months' imprisonment. On the commencement of section 154(1) of the Criminal Justice Act 2003, the maximum sentence on summary conviction will rise to 12 months. The maximum penalty on conviction on indictment is five years' imprisonment.