

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Criminal Law

Section 38 – Threatening or abusive behaviour

180. This section creates an offence of engaging in ‘threatening or abusive behaviour’. Subsection (1) provides that it is an offence for a person to behave in a threatening or abusive manner where that behaviour would be likely to cause a reasonable person to suffer fear or alarm and he or she either intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.
181. Subsection (2) provides a defence for a person who has been charged with an offence of threatening or abusive behaviour to show that the behaviour was, in the particular circumstances, reasonable.
182. Subsection (3) provides, for the avoidance of doubt, that this section applies to behaviour of any kind, including things said or otherwise communicated as well as things done, and that it applies both in respect of behaviour consisting of a single act and behaviour consisting of a course of conduct (e.g. the repeated sending of threatening texts or emails or repeatedly following them from their home or place of work).
183. Subsection (4) provides that the maximum penalty on conviction on indictment is imprisonment for a term not exceeding 5 years or a fine or both. The maximum penalty on summary conviction is imprisonment for a term not exceeding 1 year or a fine not exceeding the statutory maximum or both