

2017 No. 93 (C. 6)

CRIMINAL LAW

CRIMINAL PROCEDURE

**The Abusive Behaviour and Sexual Harm (Scotland) Act 2016
(Commencement No. 1 and Transitional Provision) Regulations
2017**

<i>Made</i> - - - -	<i>21st March 2017</i>
<i>Laid before the Scottish Parliament</i>	<i>23rd March 2017</i>
<i>Coming into force</i> - -	<i>24th April 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 45(2) and (3) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (Commencement No. 1 and Transitional Provision) Regulations 2017 and come into force on 24th April 2017.

(2) In these Regulations “the Act” means the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

Appointed day

2.—(1) Subject to paragraph (2), 24th April 2017 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 1 (domestic abuse aggravation);
- (b) section 5 (non-harassment orders in criminal cases);
- (c) section 6 (jury directions relating to sexual offences);
- (d) section 7 (incitement to commit certain sexual acts elsewhere in the United Kingdom);
- (e) section 8 (commission of certain sexual offences elsewhere in the United Kingdom);
- (f) section 9 (commission of certain sexual offences outside the United Kingdom);
- (g) section 41 (interpretation);
- (h) section 43 (minor and consequential modifications); and

(i) paragraph 6 of schedule 2 (minor modification of section 54(8) of the Sexual Offences (Scotland) Act 2009^(a)).

(2) Section 43 of the Act comes into force only for the purpose of commencing paragraph 6 of schedule 2.

Transitional provision: domestic abuse aggravation

3. Section 1 of the Act applies in respect of offences committed by acts done or omissions made on or after 24th April 2017.

Transitional provision: non-harassment orders

4. Section 5 of the Act applies in respect of offences committed, acts done, or omissions made, on or after 24th April 2017.

Transitional provision: jury directions relating to sexual offences

5.—(1) Section 6 of the Act applies in respect of proceedings commenced on or after 24th April 2017.

(2) For the purposes of paragraph (1), proceedings are commenced when the indictment is served.

MICHAEL MATHESON
A member of the Scottish Government

St Andrew's House,
Edinburgh
21st March 2017

(a) 2009 asp 9.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (“the Act”) received Royal Assent on 28th April 2016 and sections 42, 44, 45 and 46 of the Act came into force the following day.

Regulation 2 of these Regulations brings into force the following provisions of the Act on 24th April 2017:

- Section 1 which aggravates an offence if it involves domestic abuse, i.e. abuse of a partner or ex-partner.
- Section 5 which enables a non-harassment order to be granted by a criminal court to protect victims in circumstances where a person is acquitted of an offence, or found unfit to stand trial for an offence, for reasons connected to the person’s mental or physical health.
- Section 6 which requires judges in solemn trials of certain sexual offences to give the jury directions where there is evidence that the complainer has delayed reporting or failed to report the offence. Jury directions are also required where evidence indicates that physical force has not been used in the commission of the offence, or that the complainer has not offered physical resistance.
- Section 7 which gives extraterritorial reach within the United Kingdom to the offence of incitement to commit certain sexual offences against children outside Scotland.
- Section 8 which applies certain sexual offences against children extraterritorially within the United Kingdom and makes associated procedural provisions.
- Section 9 which adjusts the way in which nationality and residency requirements apply to extraterritorial sexual offences against children committed outside the United Kingdom.
- Section 41 which contains definitions relied on in the interpretation of provisions commenced by these Regulations.
- Section 43 which introduces schedule 2, but only for the purpose of commencing paragraph 6 of schedule 2 (see below).
- Paragraph 6 of schedule 2 which corrects an error in section 54 of the Sexual Offences (Scotland) Act 2009 (offence of incitement to commit certain sexual acts against children outside the United Kingdom).

Regulations 3 to 5 make transitional provision. Regulation 3 applies section 1 of the Act to offences committed on or after the coming into force date. Where the offence is committed by a course of conduct, all the conduct must have occurred on or after that date.

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