



CROWN OFFICE  
& PROCURATOR  
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

Response and Information Unit  
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**Private and Confidential**

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Mr D Emms

By email:

[request-582000-72c63e41@whatdotheyknow.com](mailto:request-582000-72c63e41@whatdotheyknow.com)

Our ref: R021149

17 June 2019

Dear Mr D Emms;

Thank you for your request received on 10 June 2019 in which you requested the following information under the Freedom of Information (Scotland) Act 2002 (FOISA):

*Please supply me information contained in your records: relating to the implementation of the new domestic abuse act that came into force on 1st April 2019.*

*I note the following:*

*The legislation has been shaped by those who have experienced domestic abuse and creates an offence with respect to a course of behaviour which is abusive towards that person's partner or ex-partner.*

*The new law covers not only spouses, civil partners and cohabitants but also people in intimate personal relationships who do not live together.*

*As well as physical abuse, it will cover other forms of psychological abuse and coercive and controlling behaviour that cannot be easily prosecuted under the existing law.*

*With the above in mind, that being that domestic abuse is not a one off incident, its a course of action, and in particular psychological and controlling behaviour evolves over a period of time.*

*Please advise the recourse in legislation for victims of a course of actions under this act where the abuse commenced before the date of implementation, but which the behaviour is continuing after the act came into force?*



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In relation to your request, the information you have requested is seeking guidance or advice on the application of a specific circumstance under legislation and as such this information is not recorded by COPFS, therefore, in terms of Section 17 of FOISA COPFS does not hold the information you have requested.

That being said, and in response to your queries raised. The Domestic Abuse (Scotland) Act 2018 criminalises courses of abusive behaviour directed towards partners or ex partners that occur on or after 1st April 2019 and therefore cannot be applied to behaviour that occurred prior to this date. It does remain possible, however, for prosecutions to be raised for behaviour that occurred prior to this date if that behaviour would have been criminal at the time it occurred.

Additionally, there may be circumstances where evidence of prior behaviour, that was not criminal prior to 1st April 2019, may be lead in support of a prosecution for a Domestic Abuse (Scotland) Act 2018 offence in relation to offending that occurred on or after 1st April 2019.

The Crown Office and Procurator Fiscal Service would encourage all victims of domestic abuse to seek help and support and report all previous or ongoing abuse to Police Scotland.

If you wish anything further in light of this information please submit a further FOI request to [FOI@copfs.gov.uk](mailto:FOI@copfs.gov.uk)

Please note that the more specific you are in describing the information you want helps us consider what we can disclose.

If you are dissatisfied with the way in which your request has been handled, you do have the right to ask us to review it. Your request should be made within 40 working days of receipt of this letter and we will reply within 20 working days of receipt. If you require a review of our decision to be carried out, please e-mail [foi@copfs.gov.uk](mailto:foi@copfs.gov.uk).

The review will be undertaken by staff not involved in the original decision making process.

If our decision is unchanged following a review and you remain dissatisfied with this, please note that although generally under section 47(1) of FOISA there is a right of appeal to the Scottish Information Commissioner, where the information requested is held by the Lord Advocate as head of the systems of criminal prosecution and investigation of deaths in Scotland, under section 48(c) no application can be made as respects a request for review made to the Lord Advocate. The information you have requested appears to fall into that category, although ultimately it would be for the Commissioner to decide whether that was the case should you refer the matter to him.



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In circumstances where section 48(c) does not apply and the Commissioner accepts an appeal, should you subsequently wish to appeal against that decision, there is a right of appeal to the Court of Session on a point of law only.

I hope this information is of some assistance.

Yours sincerely,

**B Young**

Response and Information Unit

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