

Committee for Justice- Protection from Stalking Bill

Call for Evidence

Response on behalf of the Council of District Judges (Magistrates' Court) in Northern Ireland

Introduction

The Council is the representative body for the DJs (MC) in Northern Ireland. Our members preside over summary trials in the Magistrates' Courts as well as hearings in the Domestic Proceedings Court and therefore deal with the bulk of domestic violence and related issues that come before the courts in this jurisdiction.

Prosecutions under the Protection from Harassment (Northern Ireland) Order 1997 are common in our courts as are applications under articles 7 and 7A of that Order for restraining orders. We note the overlap in some of the statutory provisions contained in the 1997 Order and the Bill e.g. the concept of a course of conduct and the statutory defences and wonder whether or not consideration was given to amending the 1997 Order to contain the two offences created by the Bill as opposed to a stand-alone statute. The equivalent provisions in England and Wales were introduced by the Protection of Freedoms Act 2012 which inserted the new offences into their Protection from Harassment Act 1997. From a lawyers' and judges' perspective there is merit in having related offences consolidated in one piece of legislation as opposed to separate statutes.

The Council will continue to liaise with officials in the Lord Chief Justice's Office as the Bill progresses to ensure early consideration of any implications for the working of the courts and looks forward to receiving relevant judicial training in respect of the new offences once Royal assent is granted.

Clauses

Where a clause, or part of a clause, does not seem to require an explanation or comment none is given.

1. The sentencing provisions are set at a level indicating that this offence is a more significant offence than those currently open to the PPS under the 1997 Order.
2. See the comments in respect of clause 1 above.
3. The special measures clause is appropriate.
4. No comment.
5. No comment.
6. See the comments in respect of clause 7 below.
7. The provisions in respect of Stalking Protection Orders largely follow the provisions of the Stalking Protection Act 2019. However, that England and Wales Act defines a risk

associated with stalking at section 1(4) (b) to include “acts which the defendant knows or ought to know are unwelcome to the other person even if, in other circumstances, the acts would appear harmless in themselves.” This appears to be a more subjective test than that contained within the Bill which at clause 6 (2) (j) makes reference to a reasonable person test when determining if an act is “associated with stalking”.

8. Is the potential limit to the SPO at sub-clause 4 necessary? Courts are well versed in imposing bail conditions, VOPOs, SOPOs and restraining orders and can be trusted not to make any orders which are impossible to comply with or are, in the circumstances, disproportionate.

9. No comment.

10. The Bill has clauses in respect of variation, discharge and renewal of orders but is silent in respect of appeals. This is in contrast to the 2019 Act as well as, for example, the Justice Act (Northern Ireland) 2015 which does contain specific appeal provisions (section 63) in respect of Violent Offences Prevention Orders made in the Magistrates’ Court.

11. See comments in respect of clause 8 above.

12. No comment.

13. No comment.

14. No comment.

15. No comment.

16. No comment.

17. No comment.

18. No comment.

19. No comment.

20. No comment.



District Judge (Magistrates’ Court)

Chair of the Council of District Judges (MC) (NI).

14th April 2021