



Northern Ireland  
Assembly

**Committee for Justice**

# Report on the Protection from Stalking Bill

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# Powers and Membership

## Powers

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Justice and has a role in the initiation of legislation.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Justice.

## Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Mr Mervyn Storey MLA (Chairperson)<sup>1</sup>
- Ms Sinéad Ennis MLA (Deputy Chairperson)<sup>2</sup>
- Mr Doug Beattie MLA
- Ms Sinéad Bradley MLA<sup>3</sup>
- Ms Jemma Dolan MLA<sup>4</sup>
- Mr Robin Newton MLA<sup>5</sup>
- Ms Emma Rogan MLA<sup>6,7</sup>
- Mr Peter Weir MLA<sup>8</sup>
- Ms Rachel Woods MLA

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<sup>1</sup> With effect from 14 June 2021, Mr Mervyn Storey replaced Mr Paul Givan as Chairperson

<sup>2</sup> With effect from 2 August 2021, Ms Sinéad Ennis replaced Ms Linda Dillon as Deputy Chairperson

<sup>3</sup> With effect from 26 May 2020, Ms Sinéad Bradley replaced Mr Patsy McGlone

<sup>4</sup> With effect from 16 March 2020, Ms Jemma Dolan replaced Mr Pat Sheehan

<sup>5</sup> With effect from 21 June 2021, Mr Robin Newton was appointed as a Member of the Committee

<sup>6</sup> With effect from 17 February 2020, Ms Martina Anderson replaced Mr Raymond McCartney

<sup>7</sup> With effect from 9 March 2020, Ms Emma Rogan replaced Ms Martina Anderson

<sup>8</sup> With effect from 21 June 2021, Mr Peter Weir replaced Mr Paul Frew

# List of Abbreviations and Acronyms used in this Report

CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CJINI	Criminal Justice Inspection Northern Ireland
DAPO	Domestic Abuse Protection Order
ECHR	European Convention on Human Rights
EFM	Explanatory and Financial Memorandum
FOUR	Fixated, Obsessive, Unwanted, Repeated behaviour
LGBTQIA	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual
MAPPA	Multi-Agency Public Protection Arrangements
MLA	Member of the Legislative Assembly
NI	Northern Ireland
NICTS	Northern Ireland Courts and Tribunals Service
NIHRC	Northern Ireland Human Rights Commission
NIWEP	Northern Ireland Women’s European Platform
PPANI	Public Protection Arrangements Northern Ireland
PPRP	Promoting Positive Relationships Programme
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
SOPO	Sexual Offences Prevention Order
SPO	Stalking Protection Order
UK	United Kingdom
VOPO	Violent Offences Prevention Order

# Executive Summary

1. This report sets out the Committee for Justice's consideration of the Protection from Stalking Bill.
2. The Protection from Stalking Bill consists of 20 Clauses divided into three parts. Its purpose is to improve the operation of the justice system by creating a specific offence of stalking that recognises the experience of victims and that stalking is a course of behaviour that includes contact on two or more occasions and causes fear, alarm or substantial distress to the victim. The Bill also creates an offence of threatening and abusive behaviour that can be triggered by a single incident and provides that all victims of stalking will automatically be eligible for special measures when giving evidence in proceedings.
3. The Bill also makes provision for Stalking Protection Orders (SPOs) to provide protection to a person at risk of stalking and enable early police intervention pre-conviction to address stalking behaviours before they become entrenched or escalate in severity and protect victims from more serious harm.
4. The Committee requested evidence from interested organisations and individuals as well as the Department of Justice as part of its deliberations on the Bill.
5. Thirty-six written submissions were received along with submissions from a number of individuals. The Committee held eleven oral evidence sessions with organisations as well as exploring the issues raised in the written and oral evidence with the Department of Justice both in writing and in oral briefings.
6. A number of organisations including the Women's Policy Group NI, the Women's Aid Federation and La Dolce Vita Project undertook research and surveys into the experiences of the individuals whom they support and provided personal testimonies and detailed examples as part of the evidence that they submitted. Committee Members also met privately with a number of individuals to discuss their personal experiences of stalking and their views on the legislation.

7. The Committee is acutely aware of how difficult it was for those individuals to relive their experiences and wishes to place on record its appreciation of them for doing so. There is no doubt that those conversations and the first-hand evidence provided by the organisations improved Members' understanding of the myriad ways in which stalking manifests itself and the devastating impact it has on the individuals who are subject to it and it reinforced the need to have effective legislation in place to deal with the issue.
8. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner drew attention to Clause 17 of the Bill that provides that the Department must issue guidance to the Chief Constable about the exercise of the Chief Constable's functions under the provisions of the Bill relating to Stalking Protection Orders or Interim Stalking Protection Orders and suggested that the Committee may wish to consider whether it may be desirable to include a requirement to lay the guidance before the Assembly in the Bill. The Committee explored this matter with the Department.
9. The Committee considered the provisions of the Bill and a number of proposed amendments at 24 meetings.

## **Key issues Relating to the Clauses in the Bill**

10. At its meeting on 30 November 2021, the Committee undertook its formal Clause by Clause consideration and agreed the Clauses in the Bill as drafted, or with proposed departmental amendments to make a change to Clause 17, as requested by the Committee, and a minor technical change to Clause 19.
11. The Committee also supported other departmental amendments, made at the Committee's request, to insert new provisions relating to data collection, mandatory training and to require the Department to report on the operation of the Act. However, the Committee agreed to amend the Department's amendments on training and the reporting requirements to include a requirement to report on the training and to provide for a more detailed obligation on data capture of Stalking Protection Orders and Interim Stalking Protection Orders.

12. The Committee consideration of the Clauses and other issues is outlined below.

## **Clause 1 – Offence of Stalking**

13. Clause 1 creates a new offence of stalking, sets out what constitutes stalking behaviour for the purposes of the offence, provides that a course of conduct occurring outside the United Kingdom can constitute a stalking offence, provides for a defence for the behaviour where it can be demonstrated that, in the particular circumstances, the behaviour was deemed to be reasonable, sets out the penalties for the offence and provides that, when the facts do not amount to the offence of stalking in proceedings, a person may be convicted of the alternative offence of threatening or abusive behaviour provided for in Clause 2.
14. There was widespread support for the legislation and the creation of a new stalking offence from those organisations and individuals who provided written and oral evidence to the Committee. Support was also expressed for the penalties associated with the offence. A number of those who responded advised that existing harassment legislation is not fit for purpose and offers little or no protection from stalking for victims. The specific offence of stalking is therefore to be welcomed.
15. A number of issues and questions were raised in relation to the new offence. These included the need to ensure that the offence is wide enough to encompass all forms of stalking behaviour including cyberstalking and the list of behaviours is non-exhaustive; whether the offence is suitably framed to address new forms of stalking behaviour, particularly online stalking behaviour, as they emerge; clarity on the meaning of a 'course of conduct'; the gendered nature of the offence; and potential misuse of the offence by perpetrators.
16. The Committee explored the issues raised in more detail during the oral evidence sessions with organisations and in writing and during oral evidence sessions with Department of Justice officials. The Committee also commissioned a research paper on online trolling and abuse to assist its consideration of the issues raised in this regard, particularly in relation to the



use of anonymous accounts and the need to hold social media providers to account, both within the context of the Stalking Bill and also more widely.

17. The Committee noted the widespread support for the introduction of separate legislation to deal with stalking and the provision of a stalking offence in Northern Ireland.
18. Stalking is fixated, obsessive, unwanted and repeated behaviour which often escalates quickly. It is insidious and terrifying for victims and there is no place for it in our society. The effect of such crimes is clear and can have a profound and lasting impact on victims that cannot be minimised in any way. It is the view of the Committee that the current law does not offer adequate protection and the need for robust legislation to provide the necessary tools for the criminal justice agencies to tackle stalking behaviour, take account of patterns of such behaviour over time, and bring the perpetrators to justice with penalties that reflect the seriousness of the offence is abundantly clear.
19. The Committee believes that the new offence will address gaps in the legislation, enable more effective action to be taken against perpetrators and will enhance the protection and access to justice provided to victims by the justice system.
20. The Committee agreed that it is content with Clause 1 as drafted. One Member, Ms Sinéad Bradley MLA, registered her reservations about Clause 1 with regard to the descriptors.

## **Clause 2 – Offence of Threatening or Abusive Behaviour**

21. Clause 2 creates the offence of threatening or abusive behaviour, provides a defence for a person charged with the offence to show that the behaviour was reasonable in the particular circumstances, describes the behaviour which can consist of a single act or a course of conduct (two or more occasions) and provides the penalty for the offence.

22. A number of organisations welcomed the provision of this offence that can be used for a single act. Concerns were however raised in relation to the breadth of the offence and its use in Scotland in other circumstances not involving stalking behaviour, the fact that it can apply to a course of conduct and not just a single incident and whether the 'reasonable person' test could be strengthened.
23. The Committee discussed the breadth and scope of this offence with departmental officials on 14 October 2021, including how a one-off event relates to stalking and whether a single online event that is threatening or abusive could be captured by it and the operational challenges this may cause. The Committee also sought additional information regarding how the offence would apply in practice, the 'implied reasonable person' test already in the offence, how many cases had been taken under this offence in Scotland and whether it could be used as an alternative to prosecution under the harassment legislation for acts other than stalking.
24. Having considered the issues raised in the evidence, the Department of Justice's response and the further information and clarification it had provided, the Committee agreed that it is content with Clause 2 as drafted.

### **Clause 3 – Special Measures Directions**

25. Clause 3 amends the Criminal Evidence (NI) Order 1999 to provide that all victims of an offence of stalking will have automatic eligibility for assistance (such as the use of live links or screens at court) when giving evidence in proceedings.
26. While the provision of automatic eligibility for special measures in stalking cases was widely welcomed, several organisations who support victims raised a number of operational issues in relation to special measures. These included the need to ensure that special measures provisions are available and resourced appropriately; the impact of inadequate technology; whether special measures should be extended to victims of stalking for the purposes of civil and family cases in which their stalker is also a party or involved; and the lack of awareness amongst victims of the availability of special measures.

27. The operational difficulties with, and the lack of awareness of, the provision of special measures has been raised with the Committee in the past, most recently in the context of the Domestic Abuse and Civil Proceedings Act (NI) 2021, and the Committee expects the NI Courts and Tribunals Service (NICTS) to ensure that appropriate and effective special measures are provided as and when required.
28. The Committee agreed that it is content with Clause 3 as drafted but reiterated the importance of implementing a programme of work to raise awareness of special measures.

## **Clause 4 – Alternative to Conviction of the Domestic Abuse Offence**

29. Clause 4 adds the offences of stalking and threatening and abusive behaviour, as alternative convictions in a trial of the domestic abuse offence under the Domestic Abuse and Civil Proceedings Act (NI) 2021.
30. The key concern raised was that, if used as an alternative to a conviction of domestic abuse, it needs to take adequately into account the offence and must not be seen as a lesser offence and create a hierarchy of offences.
31. Having considered the Department's clarification on 14 October 2021 that it is envisaged that the offence of stalking or the offence of threatening or abusive behaviour would only be used as an alternative to the domestic abuse offence where it is not possible to provide evidence of the required personal connection between the individuals, the Committee agreed that it is content with Clause 4 as drafted.

## **Clause 5 – No Right to Claim Trial by Jury**

32. Clause 5 amends Article 29(1) of the Magistrates' Courts (NI) Order 1981, the effect of which is to prohibit those accused of the stalking offence or offence of threatening and abusive behaviour, before a magistrates' court, electing for trial by jury at a Crown Court.

33. The prohibition of electing for a trial by jury in the Crown Court was welcomed as a positive measure for victims and the Committee agreed that it is content with Clause 5 as drafted.

## **Clause 6 – Meaning of Act Associated with Stalking and Risk Associated with Stalking**

34. There is clear support for the introduction of Stalking Protection Orders (SPOs) and for the police to make the application to the court for such an order.
35. A number of issues were however raised in relation to SPOs and interim SPOs, some of which focused on how the process will work in practice.
36. Clause 6 gives a definition of the acts and risk associated with stalking for the purposes of this section and sections 7 to 10.
37. The key issues raised by organisations related to the standard of proof that will apply to SPOs, the need to communicate with victims and keep them updated on the position regarding a SPO and whether a rehabilitation period is required in the legislation. Questions were also raised about whether SPOs are civil applications, given that Clause 13 provides that a breach is a criminal offence.
38. When officials attended on 14 October 2021 the Committee sought further information and clarification from the Department on why SPOs are civil orders, what difference there is in the evidence threshold for a SPO and an interim SPO and what standard of proof the court will apply when considering an application for an order. Whether there is a need to factor a rehabilitation period into the Bill was also discussed.
39. The Committee supports the introduction of SPOs and interim SPOs as a tool to enable the police to offer a victim immediate protection from continuing or increasing risk of harm and also to enable the police to proactively intervene earlier and disrupt stalking behaviour before it escalates or becomes entrenched and agreed that it is content with Clause 6 as drafted.

## **Clause 7 – Applications for Orders**

40. Clause 7 sets out who may apply for an order, what a Stalking Protection Order is, and the grounds on which an application for an order may be made.
41. The key issues raised in the evidence related to whether the Chief Constable is able to delegate authority to make an application for a SPO, the need for the views of victims to be taken into account and for victims to be engaged in the process and the provision of adequately resourced Stalking Behaviour Perpetrator Programmes.
42. The Committee supports placing the onus on the police rather than the victim to apply for SPOs and interim SPOs but welcomed the reassurance that victims would be part of the process. The Committee believes that data collection and monitoring to ensure SPOs and interim SPOs are being used appropriately and effectively is an important requirement and therefore has agreed that these should be covered in the Bill. Further detail on this is included in the section in the report covering implementation of the legislation. The Committee agreed that it is content with Clause 7 as drafted.

## **Clause 8 – Power to make Orders**

43. Clause 8 sets out the powers of the court to make a stalking protection order; the grounds on which the court may make an order and what may be included in the terms of an order. The orders can place prohibitions on the defendant and can require them to undertake assessments or attend perpetrator programmes.
44. A range of prohibitions which could be included in an order were suggested in the evidence received and a number of questions were raised about the practical application of the provision and how the process to obtain an order will work. Concerns were also raised regarding the potential for 8(4)(a) to be manipulated by perpetrators to enable the stalking behaviours to continue and whether the inclusion of offences that occurred retrospective to the enactment of the legislation engages Article 7 of the European Convention on Human Rights (ECHR).

45. The Committee had a lengthy discussion with officials regarding how the victim's and perpetrator's, or alleged perpetrator's, rights would be balanced in the context of 8(4)(a), what consideration had been given to removing subsection 4 from Clause 8 and what, if any, implications this would have. Clarification of how the process to obtain an order will work in practice, how SPOs will apply in a workplace and the role of employers was also sought.
46. The Committee appreciates the need to ensure SPOs are workable and do not conflict with the ECHR; however, the confirmation provided by departmental officials that the key aim is to protect the victim and prevent the impact of stalking and it is not a question of a perpetrator's religious or work rights taking precedence was welcomed. The Committee agreed that it is content with Clause 8 as drafted.

## **Clauses 9 and 10 – Duration of Orders; and Variations, Discharges and Renewals**

47. Clause 9 sets out the period of time for which an order has effect. An order will have effect for a fixed period as specified within the terms of the order or until a further order is made. Clause 10 sets out how a Stalking Protection Order may be varied, renewed or discharged and who may apply for these measures.
48. Issues raised and discussed included the impact on victims of placing a maximum time limit on an order, the benefit of providing for a renewal of a SPO when required, whether SPOs and interim SPOs apply to the offence of threatening or abusive behaviour and the fact that Clause 10 is silent in respect of appeals against SPOs and interim SPOs.
49. The Committee agreed that it is content with Clauses 9 and 10 as drafted.

## **Clause 11 – Interim Stalking Protection Orders**

50. Clause 11 sets out a description of an Interim Stalking Protection Order. It also sets out the powers of a court of summary jurisdiction to make an interim order; who may apply for an interim order, what may be included in the terms of an interim order and the duration of an interim order.

51. Issues covered included the importance of interim SPOs being available quickly but not seen as a replacement for a full order and a request that when an interim SPO is being imposed there is a legal requirement to act in a way that supports the best interests of any children involved in the case.
52. The Committee supports the provision of interim SPOs, viewing them as a very helpful tool for the PSNI to use in the event of immediate harm to a victim and providing the time needed to obtain an SPO.
53. The Committee agreed that it is content with Clause 11 as drafted.

## **Clause 12 – Content of, and Procedure for, Orders**

54. Clause 12 sets out what details must be specified within the terms of a Stalking Protection Order or an Interim Stalking Protection Order and some procedural details on the operation of the Bill in a court of summary jurisdiction.
55. Concerns were raised regarding the criminalisation of under 18-year olds with views expressed that anyone under 18 should be dealt with in a Youth Court setting and giving anyone under 16 years old an SPO risks criminalising children unnecessarily.
56. The Committee noted the advice from the Department that, where a person is under 18 when an application for an order is made, or when an application is made to vary, renew or discharge an order, the application is to be heard in a youth court and agreed that it is content with Clause 12 as drafted.

## **Clause 13 – Offence of Breaching Order**

57. Clause 13 provides that it is a criminal offence to breach the terms of a Stalking Protection Order or an Interim Stalking Protection Order without reasonable excuse. It will be for a court to decide what constitutes a reasonable excuse in a particular case.
58. The key issues raised in respect of Clause 13 were the need to take reported breaches of an order seriously and the importance of communication with

victims. Questions were also raised about the apparent discrepancy in relation to the maximum sentence that will apply on summary conviction compared to England and Wales.

59. The Committee raised the apparent disparity in the maximum sentence on summary conviction with the Department and clarification was also sought regarding what would be deemed a reasonable excuse to breach an order.
60. The Committee welcomes the stand-alone offence of breaching an SPO or interim SPO which can attract significant penalties and notes the confirmation provided by the Department that the maximum sentence is in line with that currently available in England and Wales. This offence provides the tools for the courts to act seriously when SPOs or interim SPOs are not adhered to and should provide some reassurance to victims of stalking and the Committee agreed that it is content with Clause 13 as drafted.

## **Clauses 14 and 15 – Notification Requirements; and Method of Notification and Related Matters**

61. Clause 14 requires a defendant subject to a Stalking Protection Order or Interim Stalking Protection Order to provide certain personal details to the police before the end of three days beginning with the date the order comes into force. Subsections (2) to (4) set out what personal information the defendant is required to provide to the police and what to do if any of this personal information changes.
62. Clause 15 sets out where and how a defendant must notify the police; how notification must be acknowledged; and the police powers to verify the identity of the defendant when they attend at a police station to notify.
63. A number of additional notification requirements to those proposed were suggested and the need for clarification of operational procedures was also highlighted including whether there would be a positive obligation on police to visit, monitor or manage an individual subject to a full or interim order in the same way as for a violent offender or registered sex offender.



64. The Committee noted that the Department had commenced collaboration and discussion with colleagues in Public Protection Branch regarding the stalking offence and SPOs coming within Public Protection Arrangements in Northern Ireland (PPANI) and that this will be developed further within the remit of the Stalking Implementation Oversight Group.
65. The Committee agreed that it is content with Clauses 14 and 15 as drafted.

## **Clause 16 – Offences Relating to Notification**

66. Clause 16 provides that it is a criminal offence to fail to comply with the notification requirements without reasonable excuse or knowingly to provide the police with false information. It will be for a court to decide what constitutes a reasonable excuse in a particular case. Subsection (2) provides the penalty for the offence relating to notification requirements.
67. The same question that was raised in relation to Clause 13 regarding the apparent discrepancy in the maximum sentence that will apply on summary conviction compared to England and Wales was raised in relation to this Clause.
68. Noting the confirmation provided by the Department that the maximum sentence provided is in line with that currently available in England and Wales, the Committee agreed that it is content with Clause 16 as drafted.

## **Clause 17 - Guidance**

69. Clause 17 requires the Department of Justice to issue and publish guidance to the Chief Constable about the exercise of their functions under the second part of the Bill. It is envisaged that the statutory guidance will provide information about the procedure for applying for a Stalking Protection Order as well as providing a practical toolkit for police to use when making applications.
70. A number of organisations commented on the need for guidance to aid the implementation of the legislation, not just in respect of SPOs and Interim SPOs but in relation to the new offence and assurances were sought that voluntary

sector organisations would be involved in the preparation of the guidance along with statutory partners.

71. The Committee believes in the importance of guidance being available in relation to this new offence, similar to that provided for in the Domestic Abuse and Civil Proceedings Act, which requires the Department to issue guidance in respect of the domestic abuse offence or any other matters of criminal law and procedure that relate to domestic abuse. Whilst noting the Department's intention to include a specific section on the stalking offence in the guidance which will be published and available to all the criminal justice agencies and non-government and voluntary organisations, the Committee agreed that it wanted to see Clause 17 widened to build on the obligation to issue guidance about the exercise of the Chief Constable's functions relating to Stalking Protection Orders or Interim Stalking Protection Orders and reflect the intention of the Department to cover the stalking offence as well.
72. The Department, in response, indicated that officials had already committed to complying with the Committee's request regarding the content of the guidance to include the operation of the stalking offence and no further purpose would be served by amending Clause 17 as suggested. The Minister was however happy to make a Ministerial commitment that the Department will include the exercise of the Chief Constable's functions under the provisions of the Act relating to the stalking offence as part of the required guidance.
73. The Committee considers the provision of guidance on the new stalking offence as well as the SPOs and interim SPOs to be essential for the consistent and robust implementation of this legislation. There has been a lack of knowledge and understanding of stalking behaviour amongst the criminal justice agencies and the new offence is a 'course of conduct' offence similar to the new domestic abuse offence which is still a relatively new concept. Given that the Department intends to cover the stalking offence in the guidance the Committee is of the view that it is more appropriate to amend Clause 17 to reflect this and provide certainty, clarity and transparency, and agreed to bring forward an amendment to build on the current provision and require the Department to cover the effect of this Act and such other matters as the Department considers appropriate as

to criminal law or procedure relating to stalking in Northern Ireland in the guidance.

74. The Committee noted that the Department had stated in its Delegated Powers Memorandum on the Bill that the guidance would be laid in the Northern Ireland Assembly for information purposes and supported the proposal by the Assembly Examiner of Statutory Rules, in her advice on the delegated powers within the Bill, that a requirement to lay the guidance before the Assembly should be included in Clause 17.
75. The Department advised that its original intention to lay the guidance in the Assembly for information purposes followed the format of the Domestic Abuse and Civil Proceedings Act and aimed to maintain a consistent approach, however it was content to bring forward an amendment to Clause 17 to require the guidance to be laid before the Assembly.

## **Clauses 18, 19 and 20 – Interpretation; Commencement; and Short Title**

76. Clause 18 defines various words and phrases used within the Bill.
77. Clause 19 sets out when the provisions will come into force and gives the Department of Justice powers to make such transitional, transitory or saving provisions as the Department considers appropriate when bringing the provisions into operation. Clauses 1 to 5 and Clauses 18 to 20 will come into operation on the day after the day on which the Act receives Royal Assent. The other Clauses will come into operation on such day or days as set out by order made by the Department.
78. Clause 20 gives the short title of the Act.
79. The Committee agreed that it is content with Clause 18 as drafted, to support an amendment to Clause 19 to reflect the new provisions to be inserted in the Bill, and is content with Clause 20 as drafted.

## **Implementation of the Legislation**

80. The importance of how the legislation will be implemented including the need to ensure a comprehensive, consistent and informed approach from the criminal justice agencies was a consistent theme in the evidence received.
81. The Committee agrees that for this legislation to be effective, getting the implementation right in terms of training, data collection and monitoring, reporting, resourcing and raising awareness is essential to ensure that better protection and criminal justice outcomes are achieved for victims of stalking.

## **Data Collection**

82. The importance of the availability of detailed and robust data on stalking behaviour and the implementation of the legislation was highlighted by a number of organisations.
83. The Committee is of the view that the availability of robust data to enable the effectiveness of this legislation to be assessed is essential. The data needs to be detailed and consistent across the criminal justice system to enable analysis to take place at each stage of the process. The Committee therefore agreed that it wished to see an amendment to the Bill to provide for the Department to issue guidance on the type of information required, and the Minister agreed to bring such an amendment forward.

## **Reporting**

84. To provide for the monitoring and assessment of the implementation of the legislation and its effectiveness the Committee considered bringing forward an amendment to the Bill to place a requirement on the Department of Justice to report on the operation of the new offence and on SPOs and interim SPOs, similar to the requirement provided for in the Domestic Abuse and Civil Proceedings Act.
85. The Department did not consider the addition of a provision to cover a reporting requirement necessary but the Minister agreed, on an exceptional basis, to bring forward the amendment.

86. Having considered the text of the departmental amendment to report on the operation of the Act, the Committee sought clarification of whether data capture for the breach offences was covered and also requested that further detail regarding SPOs and interim SPOs be included. The Department confirmed that the new clause would capture those who are in breach of an order and that, in its view, the level of detail regarding SPOs and interim SPOs could be facilitated within the current proposed provision, therefore no changes to the text were required.
87. The Committee believes that the availability of detailed information on SPOs and interim SPOs is beneficial and should be included in the reporting requirement, therefore it agreed that it was content to support the departmental amendment but would amend it to provide for a more detailed obligation on data capture of SPOs and interim SPOs.

## **Training**

88. A wide range of organisations highlighted that education and training of criminal justice agencies and of judges is vital to ensure effective implementation of the legislation and clear understanding of the difference between harassment and stalking as well as recognising the behaviours and dynamics of stalking and how it impacts on victims. The need for the training to cover SPOs and interim SPOs was also raised.
89. Given the importance of training to the implementation of this legislation, particularly in light of the evidence heard on the current lack of understanding by criminal justice personnel of stalking behaviour and the devastating impact on victims, the Committee agreed that it wished to see an amendment to the Bill to provide for mandatory training. The Department indicated that, in its view, the proposed provision would only place in statute that which the Department and its agencies are already committed to undertake administratively, however, the Minister agreed, on an exceptional basis, to take forward the amendment.
90. The Committee considered the text of the departmental amendment on training and, noting that it did not appear to have any reference to reporting on the training, which is an area the Committee wanted covered, agreed to ask the

Department to include this in its amendment. The Department, in response, advised that reporting on the level of participation by personnel in training was covered in the reporting requirement on the operation of the Act amendment and therefore the proposed addition was not necessary.

91. The Department also indicated that, given the staged implementation timeframes for the offence of stalking and that Stalking Protection Orders will require different training requirements and delivery schedules, the requirements of not less than 2 years and not more than 3 years as currently presented in the text of the reporting amendment provides a more practical timeframe than the one suggested by the Committee that training should be reported before the end of the period of 18 months.
92. The Committee is of the view that a more fulsome reporting requirement on the training should be included in the provision and agreed that it was content to support the departmental amendment but would amend it to provide for this with a timescale of before the end of 3 years beginning on the day on which Sections 1 and 2 come into operation and annually thereafter.

## **Public Awareness**

93. The need for a public campaign to raise awareness of the new offence was emphasised in the evidence received by the Committee.
94. The Committee agrees that raising public awareness, knowledge and understanding of the new offence will be very important in ensuring the effectiveness of the legislation and it welcomes the commitment by the Department to undertake an awareness campaign. A requirement for the Department to report on the steps it takes to raise public awareness, and in particular the awareness of victims, of stalking has been included as part of the Department's reporting obligations on the operation of the Act.

## **Resourcing**

95. The Permanent Secretary of the Department of Finance noted that the Explanatory and Financial Memorandum (EFM) to the Bill indicated that the

financial effects arising from the Bill would be considered in a separate business case and advised that any financial effects should however be quantified in the EFM so that the full effects of any proposed legislation are understood.

96. The need for adequate, sustainable funding to ensure full and effective implementation of the legislation was a recurring theme with areas such as training and reporting requirements, costs of applications for and monitoring of compliance with the SPOs and support services to victims and survivors and their children, all highlighted as requiring appropriate financial resources.
97. The Committee appreciates the difficulties in estimating the potential resourcing requirements for the implementation of this legislation in terms of the likely number of cases given the absence of reliable data on stalking in Northern Ireland. However, to assist consideration of this legislation it would have been helpful to include in the EFM some information on the likely financial implications.
98. The Committee believes that the assessment of implementation costs and the provision of adequate resources to meet any additional demands is key to ensuring that the legislation is effective and delivers for victims of stalking, particularly given the competing budgetary pressures facing all the criminal justice agencies including the PSNI. The process to establish budgets for the 2022 – 25 period will be taking place over the coming months and the Committee will be scrutinising the Department's draft budget. This will provide an opportunity to establish what resources will be allocated to the implementation of this legislation.

## **Other Issues Raised in the Evidence Received by the Committee Not Currently Covered in the Bill**

99. A range of other issues not covered in this Bill were also highlighted in the evidence received.
100. The Committee is already considering some of these issues outside the context of this Bill such as the offence of upskirting, implementation of the Gillen Review recommendations, the provision of relationship and sexuality education and a

Violence Against Women and Girls Strategy. Some of the issues also fall within the responsibilities of Ministers other than the Minister of Justice.

101. The Committee requested further information on any proposals to establish a Stalking Register for serial perpetrators of stalking and abuse who pose a high risk to victims.
102. The Committee noted that there are currently no plans to introduce a register for stalkers in Northern Ireland, which is similar to the position in England and Wales and in Scotland, and is content with the plans to include stalking within the public protection arrangements.
103. At its meeting on 9 December 2021 the Committee agreed its report on the Protection from Stalking Bill and ordered that it should be published.



# Introduction

1. The need to address the issue of stalking in terms of robust legislation has been waiting in the wings of the Assembly since 2016 when debate was first instigated by way of a shared approach by the Committee for Justice and the previous Minister of Justice, Claire Sugden MLA.
2. In September 2016 a Private Member's Motion was passed by the Assembly calling on the Minister of Justice to develop and bring forward new legislation to enable crimes of stalking to be prosecuted based on the stalker's behaviour and the effects on the victims. Following the debate Mrs Brenda Hale MLA wrote asking the Committee to consider the gaps in legislation in Northern Ireland in relation to stalking and to press the Minister and the Department to bring forward legislation in line with that in place in the rest of the United Kingdom. The Committee subsequently agreed to undertake a Review of whether specific stalking legislation was required for Northern Ireland and the potential benefits of having it. The Minister was very supportive of the Review and gave a commitment to work collaboratively with the Committee and move towards swift implementation of any findings and recommendations including bringing forward any necessary legislation.
3. As part of the Review the Committee requested written evidence from key stakeholders and commissioned research into the prevalence of stalking in Northern Ireland and the level of prosecutions and the legislative position in other jurisdictions including the effectiveness of such an approach. The Committee also hosted a seminar in January 2017 on stalking legislation in other jurisdictions at which all the key justice agencies and representatives from the relevant stakeholder organisations attended and Laura Richards, the founder and Director of Paladin, the world's first National Stalking Advocacy Service, was the keynote speaker. Respondents to the call for evidence supported the creation of a specific stalking offence indicating that it would help to readily identify stalkers as opposed to harassers and could help to protect victims of stalking behaviour at an earlier stage. The Committee aimed to complete the Review by April 2017 however this was not possible in the absence of a functioning Assembly from January 2017.

4. The pressing need for stalking legislation was also an issue which came very much to the fore of deliberations last year during the Committee Stage of what is now the Domestic Abuse and Civil Proceedings Act with many organisations indicating there is a clear legislative gap that needs to be addressed. As part of the deliberations on that Bill the Committee did consider whether amendments should be brought forward to try and address the gap. Any amendment to the Domestic Abuse and Civil Proceedings Bill would however only have covered stalking in the context of domestic abuse and, while appreciating that stalking within this context is prevalent and causes immense distress, stalking behaviour occurs in a range of other contexts. The Committee was of the view that it would be preferable to cover all forms of stalking in the same piece of legislation and noted the intention of the Minister of Justice to introduce stand-alone legislation to address stalking at the earliest opportunity.
5. The Protection from Stalking Bill was introduced to the Northern Ireland Assembly on 18 January 2021 and referred to the Committee for Justice for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 8 February 2021.
6. At introduction the Minister of Justice made the following statement under Section 9 of the Northern Ireland Act 1998:

“In my view the Protection from Stalking Bill should be within the legislative competence of the Northern Ireland Assembly.”
7. The purpose of the Bill is to improve the operation of the justice system by creating a specific offence of stalking that recognises the experience of victims and that stalking is a course of behaviour that includes contact on two or more occasions and causes fear, alarm or substantial distress to the victim. The Bill also creates an offence of threatening and abusive behaviour that can be triggered by a single incident and provides that all victims of stalking will automatically be eligible for special measures when giving evidence in proceedings.
8. The Bill also makes provisions for Stalking Protection Orders (SPOs) to provide protection to a person at risk of stalking and enable early police intervention

pre-conviction to address stalking behaviours before they become entrenched or escalate in severity and protect victims from more serious harm.

9. The Bill consists of 20 Clauses divided into three parts:
  - Part 1 deals with the offence of stalking, an alternative offence of threatening and abusive behaviour and special measures
  - Part 2 deals with Stalking Protection Orders
  - Part 3 deals with Interpretation, commencement and the short title of the Bill

## Committee Approach

10. The Committee took oral evidence from Department of Justice officials on the principles of the Bill on 21 January 2021, following its introduction to the Assembly.
11. In addition to publishing a media signposting notice in the Belfast Telegraph, Irish News and News Letter seeking written evidence on the Bill, the Committee wrote to a wide range of key stakeholders inviting views. In response to its call for evidence, the Committee received 36 written submissions along with a number of submissions from individuals. Copies of the written submissions are included at Appendix 3.
12. During the period covered by this report the Committee considered the Bill and related issues at 24 meetings. The Minutes of Proceedings are included at Appendix 1.
13. The Committee had before it the Protection from Stalking Bill (NIA Bill 14/17-22) and the Explanatory and Financial Memorandum that accompanied the Bill.
14. At its meeting on 25 February 2021, the Committee agreed a motion to extend the Committee Stage of the Bill to 10 December 2021. The length of the extension reflected the Committee's desire to progress the legislation but ensure enough time was available for robust and detailed scrutiny. It also provided flexibility to manage the Committee's heavy legislative workload with the Criminal Justice (Committal Reform) Bill already with the Committee for scrutiny at Committee Stage and two further Bills – the Damages (Return on Investment) Bill and the Justice Bill – expected to be introduced by the Department of Justice and which would also fall to the Committee for scrutiny. The motion to extend was supported by the Assembly on 8 March 2021.
15. The Committee held 11 oral evidence sessions with a range of key stakeholders and organisations including the Suzy Lamplugh Trust, the Multi-Agency Stalking Project, the Scottish Charity Action Against Stalking and the PSNI. Links to the Minutes of Evidence are included at Appendix 2.

16. In addition to the oral evidence sessions, Members met privately with a number of individuals to discuss their personal experiences of stalking.
17. The Committee would like to place on record its thanks to all the organisations who responded in writing and provided oral evidence and, in particular, the individuals who shared their experiences.
18. The written and oral evidence highlighted widespread support for the introduction of a new stalking offence and SPOs and interim orders. It also raised a number of issues regarding whether the offence is wide enough to encompass all forms of stalking behaviour including cyber-stalking, how SPOs and interim SPOs will work in practice, the need for the guidance to cover the offence of stalking in addition to SPOs and interim SPOs, the need for adequate resourcing and the need to ensure effective implementation of the legislation.
19. The Committee explored the issues with the Department both in writing and in oral evidence sessions. Memoranda and papers from the Department of Justice on the provisions of the Bill and proposed amendments are at Appendix 4.
20. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered the Bill and Explanatory and Financial Memorandum and drew attention to Clause 17 of the Bill that provides that the Department must issue guidance to the Chief Constable about the exercise of the Chief Constable's functions under the provisions of the Bill relating to SPOs or Interim SPOs. The Examiner suggested that the Committee may wish to consider whether it may be desirable to place upon the face of the Bill a requirement to lay the guidance before the Assembly and the Committee explored this with the Department. The Examiner was satisfied with the other rule making powers provided for in the Bill.
21. To assist consideration of specific issues highlighted in the evidence the Committee commissioned a research paper from the NI Assembly Research and Information Service on Online Trolling and Abuse.

22. The Committee carried out informal deliberations on the Clauses of the Bill at its meetings on 4, 11, 18 and 25 November 2021 and undertook its formal Clause by Clause scrutiny of the Bill on 30 November 2021.
23. At its meeting on 9 December 2021 the Committee agreed its report on the Protection from Stalking Bill and ordered that it should be published.

# Consideration of the Provisions of the Bill

## OFFENCES

### Clause 1 – The Offence of Stalking

#### *The New Offence*

24. There is no strict legal definition of stalking in England and Wales, Scotland or Northern Ireland and the terms stalking and harassment are frequently interchanged. The Minister of Justice has described them as *“while harassment often presents as a disagreement over a specific issue, stalking is fixated, obsessive, unwanted and repeated behaviours as represented by the “FOUR” acronym.”*
25. The PSNI describes stalking thus:

*“It is generally accepted that it includes repeated attempts to impose unwanted communications and/or contacts on another in a manner that could be expected to cause distress and/or fear in any reasonable person. Taken in isolation behaviours may seem unremarkable, but in the particular circumstances and with repetition, they take on a more sinister meaning.”*
26. Currently Northern Ireland is the only part of the United Kingdom that does not have specific offences relating to stalking. In England and Wales, the Protection of Freedoms Act 2012 created two new specific stalking offences and in Scotland two stalking offences were created by the Criminal Justice and Licensing (Scotland) Act 2010.
27. The Protection from Harassment Order (NI) 1997 prohibits harassment and putting people in fear of violence and is used to deal with stalking at present. Other legislation that may be used to deal with stalking in certain circumstances includes:

- The Malicious Communications (NI) Order 1988
- The Communications Act 2003
- The Family Houses and Domestic Violence (NI) Order 1988
- The Justice Act (Northern Ireland) 2015
- The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021

28. Clause 1 of the Bill creates a new offence of stalking, sets out what constitutes stalking behaviour for the purpose of the offence, provides that a course of conduct occurring outside the United Kingdom (UK) can constitute the stalking offence, provides for a defence for the behaviour where it can be demonstrated that, in the particular circumstances, the behaviour was deemed to be reasonable, sets out the penalties for the offence and provides that, when the facts do not amount to the offence of stalking in proceedings, a person may be convicted of the alternative offence of threatening or abusive behaviour provided for in Clause 2.

29. As set out by the Department of Justice in its letter dated 18 January 2021:

“The provision will make it a criminal offence for a person to engage in a course of conduct that a reasonable person would consider to be likely to cause another person to suffer fear, alarm or substantial distress.”

30. The offence will be engaged where the accused engages in conduct or acts associated with stalking and could include behaviours such as:

- Following the person or any person;
- Contacting, or attempting to contact the person or any other person by any means;
- Publishing any statement or other materials relating or purporting to relate to the person, or purporting to originate from the person or from any other person;



- Monitoring the use by a person, or any other person, of the internet, email or any other form of electronic communication;
- Entering any premises;
- Loitering in any place (public or private);
- Interfering with any property in the possession of the person or any person;
- Watching or spying on the person or any person;
- Giving anything to a person or leaving anything where it may be found by, given to or brought to the attention of the person or any other person; and
- Acting in any other way that a reasonable person would expect would cause the person to suffer fear, alarm or substantial distress.

### ***Support for the Legislation and the new Offence***

31. There is widespread support for the legislation and the creation of a new stalking offence from those organisations and individuals who provided written and oral evidence to the Committee. Support was also expressed for the penalties associated with the offence.
32. Victim Support NI provides support to victims of stalking in the immediate aftermath of an incident being reported to the police and again at court. It notes that stalking is a serious crime with an associated high risk of serious harm to victims and the Harassment Order has proven to be ineffective in tackling stalking. Victim Support NI welcomes the introduction of a new stalking offence in Northern Ireland and supports the approach of a stand-alone law based on the Scottish model rather than a subsection of harassment law as the two are not the same.
33. The NI Human Rights Commission (NIHRC) stated that it has continuously raised concerns that NI is the only jurisdiction within the UK without specific stalking legislation and it therefore welcomes the Bill and the definition of what

constitutes an offence of stalking as non-exhaustive and inclusive and covers cyber stalking which is a particular growing concern.

34. The Women's Aid Federation highlighted the link between stalking and domestic abuse and outlined that stalking is about fixation and obsession and is a high-risk factor for serious harm and homicide, as well as serious psychological harm if left unchecked. It stated that the current provisions under the Protection from Harassment (NI) Order 1997 are not fit for purpose and offer little or no protection from stalking. In its view there is an urgent need for specific stalking legislation that provides greater clarity for police officers, judges etc. on stalking behaviour and affords better protection for victims. It also wants the legislation to be victim focused and intent should not have to be proven, but rather an objective reasonable test applied. The Federation supports victims and survivors of stalking on a regular basis through risk assessment, safety planning and emotional and practical support and agrees there is significant potential benefit in strengthening the law around stalking.
35. The Belfast Area Domestic & Sexual Violence and Abuse Partnership is also of the view that the Protection from Harassment legislation is not fit for purpose and does not provide adequate protection for victims. This legislation will provide much better protection to anyone who is a victim of stalking and the Partnership welcomes the new offence and associated increased penalties. It noted that the list of possible behaviours recognises that stalking, even with the absence of violence, can still be harrowing and cause distress to the victim.
36. The Women's Policy Group NI, in its joint written submission on behalf of a range of organisations, welcomed the introduction of the legislation stating that for too long protections in Northern Ireland in relation to crimes that disproportionately impact women have been lesser than in other jurisdictions across the UK and Ireland. The Group outlined that the solutions to stalking need to be preventative, understanding why and how it occurs and addressing the structures and beliefs that allow stalking to remain so pervasive. It highlighted the overlap with domestic abuse and matters such as disability, transphobia, racism, honour-based killing and others which need to be considered and taken into account.

37. START 360, Hourglass and La Dolce Vita Project all view the introduction of a new stalking offence as recognising the seriousness of stalking and the impact it has and they believe it will provide better protection for all victims.
38. Parenting NI has experience of supporting many parents who have been affected by stalking and believes the legislation, which is long overdue, will go some way to alleviating their suffering. It notes that stalking can be a complex and difficult to define act as it is often an individual experience and welcomes the clarity provided in the Bill.
39. The Probation Board is also fully supportive of the strengthening of legislation to protect victims and welcomes the introduction of a specific offence of stalking and the clarity provided as to what behaviours constitute stalking.
40. The Northern Ireland Women's European Platform (NIWEP) welcomes the Bill as an important step in protecting, in particular, women and girls from this type of violence and supports the comparatively wide definition of the offence as it recognises that stalking is an intentional pattern of behaviour designed to cause distress and can take a wide range of forms. NIWEP highlighted that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee has repeatedly emphasised that protections for women and girls in NI must be put on an equal footing with the rest of the UK and stalking legislation is one of the key gaps.
41. The Rainbow Project outlined that harassment and stalking behaviour are key issues for the LGBTQIA+ community who have experience of crime and welcomes the introduction of a specific offence that addresses the acts, course of conduct and behaviour associated with stalking given the current legislation falls short of protecting people who are vulnerable to experiencing this type of criminal behaviour.
42. HERe NI/Cara Friend emphasised the importance of producing robust legislation with a broad and non-exhaustive definition of stalking which covers cyber stalking adequately given that stalking can cause a victim to live in constant fear as well as interfering with their right to work, education and private and family life.

43. The Scottish charity Action Against Stalking advised that the challenge is to transcend the complexity of the crime of stalking and make the legislation very robust, very clear and very concise. It noted that there is no overall consensus on an academic, clinical or legal definition of stalking because of the wide range of behaviours that constitute the crime. Noting that it is not the intention of some stalkers to trigger fear and alarm in their victim, it stated that not knowing should not be a defence in the legislation.
44. The Multi-Agency Stalking Project outlined that, in their experience, harassment and stalking are substantially different offences. The stalking laws will enable better capture of the impact the stalking has had on the victim and reinforce that they are believed and taken seriously. Stalking is an immensely damaging crime with victims often reporting that they have made significant changes to their lives due to the behaviours they have been experiencing. Stalking laws are an essential part of providing a better service to victims.
45. The Police Service of Northern Ireland (PSNI) welcomes the legislation and the creation of two distinct offences of stalking and threatening and abusive behaviour which will assist in protecting victims both within domestic and non-domestic settings.
46. The Public Prosecution Service (PPS) also recognised the potential benefits to having a specific stalking offence, welcomes the method of listing types of conduct that may constitute stalking which it understands works well in operational terms in neighbouring jurisdictions and intends to prosecute cases robustly once the legislation is in place.

### ***Key Issues Raised***

47. Despite the widespread support there were a number of issues and questions raised in relation to the new offence. These included whether the offence is wide enough to encompass all forms of stalking, including cyberstalking, whether there is merit in adding further behaviours to the list provided for at 1(4), whether the intention that the list of behaviours is illustrative and non-exhaustive is covered satisfactorily in the legislation, and whether the definition of premises needs amended.

48. Other issues covered included whether consideration should be given to amending the Protection from Harassment (NI) Order 1997 rather than creating separate legislation, the gendered nature of the crime, the provision of police powers of entry, the potential to misuse the legislation, the meaning of 'a course of conduct', how the rehabilitation of offender legislation will apply to the new offences and the need for rehabilitation programmes to address the offending behaviour. The need for complaints of stalking to be handled on a case-by-case basis to consider whether the behaviour constitutes stalking and for the legislation to be victim-led, recognise that some victims are at greater risk and ensure barriers are not created to access justice were also highlighted.

**Clause 1(4)**

49. The Women's Aid Federation and the Women's Policy Group NI highlighted the importance of the offence being wide enough to encompass all forms of stalking behaviour and that the list should not be considered exhaustive. The Suzy Lamplugh Trust also indicated that it would welcome the inclusion of a statement, beyond the reasonableness statement, that clearly sets out that the list is not exhaustive. A number of organisations also proposed additional behaviours that should/could be included in the list or questioned whether particular behaviours were already adequately covered in the list.
50. La Dolce Vita wanted 1(4) amended to cover 'making use of a person's disability to cause fear, alarm or substantial distress on a person or their children', 'blackmail or suicidal threats of harm to self or another that will cause fear, alarm or substantial distress on a person and/or their children' and 'employment status or professional capacity cannot be used, misused, or abused to cause fear, alarm or substantial distress on a person and/or their children'.
51. The Rainbow Project stated that an abuser may instigate or coerce another individual to carry out actions on their behalf and believed that the use of intermediaries in continuing the abusive stalking or harassment behaviour is missing from the legislation.

52. NIWEP was of the view that the definition in subsection 1(4) needed amended to include reference to 'any dwelling in which B resides' to provide clarity and ensure victims renting a property have the same level of protection as those owning their home. It also stated that clarity in the definition that relevant premises includes bars (including LGBTQ+ bars), gyms, semi private spaces and private spaces such as businesses would be helpful to ensure victims can have confidence the legislation fully encompasses the wide forms in which stalking manifests itself.
53. The Belfast Area Domestic & Sexual Violence and Abuse Partnership noted that there was no specific definition of stalking included in the Bill and suggested that it may be useful to reference the FOUR acronym to enable better understanding and recognition of what stalking is.
54. The Department advised that it has opted for a non-exhaustive list and the inclusion of 1(4)(j) which *covers "acting in any other way that a reasonable person, or a reasonable person who has any particular knowledge of B which A has, would expect would cause B to suffer fear, alarm or substantial distress"* will provide a 'catch all' of other behaviours and possible scenarios not specifically listed. The 'catch all' provision will ensure that police, the PPS and the judiciary have discretion in considering what constitutes stalking behaviour which is behaviour of any kind that causes the victim to suffer fear, alarm or distress.
55. The Department confirmed that using a person's disability to stalk would be covered by *"the reasonable person who has any particular knowledge of B that A has"* aspect of the clause and it will also encompass seemingly innocuous behaviour such as A leaving a gift, or a message with a third party, with the intention that the third party should deliver the gift/message to B and the situation where A makes use of a proxy C, to stalk B. No specific reference to "third party" is therefore required on the face of the Bill. Clause 1(4)(e) includes "any premises" and 1(4)(b) covers contacting or attempting to contact B, or any other person, by any means.

## **Cyber Stalking and Online Abuse**

56. A key issue raised is the ever-increasing volume of cyberstalking and online harassment and a range of organisations sought assurances that this behaviour was adequately covered in the Bill and suitably framed to address new forms of online stalking behaviour as they emerge.
57. The Women's Policy Group NI stated that the current legislation across the UK to deal with social media and the cyber world is wholly inadequate and there is an urgent need to address the inability for legislation created before the existence of social media to effectively address the growing problem of targeted abuse, harassment, cyberstalking and threats towards women, particularly women from marginalised groups. The Group highlighted the need for the legislation to be broad enough to address new forms of online stalking and abuse as they emerge.
58. HERe NI/Cara Friend also indicated that the definition of stalking should include cyberstalking and online harassment and highlighted that the use of drones in stalking is a growing problem. They noted that, as technology evolves, additional protections may be needed and the legislation should therefore include a mandatory review to allow for any changes required.
59. The Rainbow Project highlighted an increase in the use of digital tools to stalk and abuse victims in recent years based on their experience working with clients. Women's Aid also noted that developments in technology are continually taking place and the list of stalking behaviours needs to be non-exhaustive to allow for this.
60. NIWEP expressed the view that explicit reference to online stalking and abuse would be helpful as this is an increasingly prevalent form of stalking, particularly in the youngest age groups and START 360 wanted urgent work undertaken to specifically look at electronic stalking and to see a joined-up approach between the Department of Justice, the Police Service of Northern Ireland (PSNI) and the social media companies to shut down this sort of threatening behaviour.
61. The Scottish charity Action Against Stalking was however of the opinion that it is not the legislation that is the problem but rather it is the technology and the fact

that the police are not up to speed with it and stated that technology will always be faster than the slow response of the systems to deal with new emerging behaviours.

62. In response to the issues raised regarding cyberstalking and abuse the Department confirmed that 1(4)(d) will capture online stalking and it is confident that the provisions of the Bill are equally capable of capturing and protecting victims from both cyber and in-person stalking behaviour.
63. The Department outlined that there are other offences in place specifically for online abuse including:
  - The Malicious Communications (NI) Order 1988 – Article 3 makes it an offence to send indecent, offensive, threatening or false letters or articles with intent to cause distress or anxiety which attracts a penalty of up to a £2500 fine.
  - The Communications Act 2003 – Section 127 makes it an offence to use a public electronic communications network to send a message or any other matter that is grossly offensive or menacing and provides a penalty of a maximum six months' imprisonment and/or a fine of £5000.
64. The Department also advised that the UK Online Harms Bill, which is currently progressing through Westminster and will extend to Northern Ireland, will require social media companies to deal more robustly with online abuse.

### **The Need for Separate Legislation**

65. The Council of District Judges (Magistrates' Court) in Northern Ireland noted the overlap in some of the statutory provisions contained in the Protection from Harassment (NI) Order 1997 and this Bill and questioned whether 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 Council stated that from a lawyers' and judges' perspective there is merit in having related offences consolidated in one piece of legislation and noted that the equivalent provisions in England and Wales were inserted into the Protection from Harassment Act 1997.



66. The Department advised that the Bill is the end result of an extensive review of the existing legislative framework, engagement with other jurisdictions on their stalking policies and practices and the development of policy proposals that drew on responses to a public consultation. The majority of respondents to the consultation supported the introduction of a specific offence of stalking in Northern Ireland and the consensus was that stalking needed to be treated differently from harassment, given its more complex and insidious nature and the lack of understanding from police of the risks posed to victims. The Minister of Justice made the decision to introduce separate legislation to provide better protection for victims, ensure reports of stalking were taken seriously by the criminal justice system and to give stalking the prominence it deserves.

### **Police Powers of Entry**

67. The inclusion of police powers of entry in relation to stalking was raised by Women's Aid and the Women's Policy Group NI who both highlighted that this was covered in the England and Wales Stalking legislation and believed consideration should be given to including it in this Bill.
68. The Department confirmed that police will have the power of entry and search in relation to both the stalking offence and the offence of threatening and abusive behaviour as they are indictable offences. The powers are contained within Part 3 of the Police and Criminal Evidence Order (NI) 1989 – powers of entry, search and seizure – and therefore there is no need for a specific search provision in this Bill. The 2A stalking offence in England and Wales is a summary only offence hence the need for a power of entry provision in that legislation.

### **Meaning of Course of Conduct**

69. The Probation Board requested further clarity regarding the meaning of a "course of conduct" as referred to at 1(1)(a) and whether the behaviour on two or more occasions has to be directed against the same individual and, if so, is the alleged perpetrator warned by the PSNI after the first occasion that their behaviour could be construed as stalking along the lines of Child Abduction Warning Notices.

70. The Department clarified that a 'course of conduct' involves conduct on two or more occasions and outlined that 1(4)(b) includes contacting, or attempting to contact B, or any other person by any means. However, the alternative offence of threatening or abusive behaviour can be made after a single incident.

### **Rehabilitation of Offenders Order**

71. The NI Human Rights Commission questioned whether stalking offences will be classified as a general offence under the Rehabilitation of Offenders (NI) Order 1978 as well as whether having a Stalking Prevention Order will be a spent conviction or require disclosure for specific employment. The Commission also wanted clarification regarding what detail would be provided when an employer conducts vetting procedures on an employee with a Stalking Prevention Order and where an individual has several Orders whether this required enhanced vetting procedures to identify. The Commission recommends that clarity around how the rehabilitation of offender legislation will apply to all stalking offenders is provided.
72. The Department advised that the offence of stalking will automatically be captured by the Rehabilitation of Offenders legislation as it is the sentence imposed upon conviction that dictates rehabilitation requirements and not the nature of the offence. SPOs are civil orders, however any breach of an order will be a criminal offence and any subsequent conviction will trigger rehabilitation requirements in line with the sentence imposed.

### **Rehabilitation Programmes**

73. START 360 and NIWEP highlighted the need for adequate rehabilitation programmes to address stalking behaviours. START 360 referred to the need to ensure that adequate rehabilitation takes place should someone spend time in prison for a stalking offence to address their behaviour and reduce the risk of reoffending. It also stated that offenders should also be provided with interventions including, but not limited to, mental health or psychological assistance where necessary. NIWEP stated that rehabilitation is a key part of all sentences and highlighted the lack of offender rehabilitation services in Northern Ireland. It stated that these are needed to effectively address the high

rates of reoffending associated with stalking and other types of violence against women.

74. The Department agrees that perpetrator interventions will be a key element in addressing stalking behaviours and stated that the Probation Board Promoting Positive Relationships Programme (PPRP) is designed for those who have demonstrated the potential to be abusive in intimate relationships. The programme covers a range of behaviours including those that are associated with stalking type behaviour. The Department stated that it is committed to working collaboratively with partner organisations to develop and promote such interventions specifically for stalking perpetrators and indicated that the Probation Board will be a key partner in the development of the programmes.
75. The provision of rehabilitation programmes is covered in more detail under Clause 7.

### **Misuse of the Offence**

76. Parenting NI was concerned that there is the potential for this Bill to be abused by malicious resident parents against non-resident parents and highlighted anecdotal evidence from the non-resident parents the organisation supports that suggested that such individuals already often misuse existing methods (such as non-molestation orders) to put temporary blockages on visitation between children and their non-resident parent – often part of what is termed ‘parental alienation’. Parenting NI recommended that consideration should be given to mechanisms that would curtail the misuse of the provisions in the Bill to prevent access to children by a non-resident parent and believed that 1(7)(b) is particularly open to interpretation that could result in malicious misuse of the Bill.
77. The Department outlined that policy on parental alienation and the matters the court is required to consider when determining applications relating to contact fall to the Department of Health and Department of Finance respectively and any change to the framework would be a matter for those Departments. It noted that the legal framework does however already make the welfare of the child the paramount consideration and that would include the impact of any change of

circumstances such as interruption of contact. The Department advised that the Department of Health intends to consider guidance and training for professionals involved with families suffering acrimonious disputes and associated negative behaviours.

### **Gendered Nature of the Offence**

78. The Belfast Area Domestic & Sexual Violence and Abuse Partnership outlined that statistics show that the majority of victims of stalking are female while the majority of perpetrators are male and is of the opinion that it may be useful to reflect the gendered nature of stalking in the legislation and to look at how it links to the wider issue of violence against women and girls.
79. The Women's Policy Group NI also stated that legislation that relates to areas of violence that disproportionately impact women needs to recognise the gendered nature of the crime and underlying, deep-rooted attitudes of misogyny in our society and NIWEP recommended a gendered element is included in the definition given the disproportionate prevalence of women amongst stalking victims but it is essential to ensure the language is inclusive of LGBTQ+ people.
80. Victim Support NI is of the view that the legislation should be accompanied by a gender-aware policy and strategic framework to ensure that everyone applying the law understands the dynamics, root causes and red flags of different forms of stalking.
81. While the Department is aware that a high proportion of stalking victims are female and perpetrators are largely male it stated the legislation has to be gender neutral and accessible to anyone in the community. The guidance provided and training delivered to criminal justice organisations can reflect the reality of the situation.

### **Victim-Led Legislation**

82. The Women's Policy Group NI outlined the need for the new legislation to be victim-led with recognition of the intersectional needs of different groups and societal factors that put some victims at greater risk or create barriers to accessing justice e.g. the barriers for disabled women seeking support and

unique forms of coercive abuse they face; harmful heteronormative stereotypes that prevent LGBTQI+ people seeking help or recognising abuse; and inhumane policies such as No Recourse to Public Funds which create further barriers and fear for women with uncertain immigration status from reporting abuse due to fears of being reported to the Home Office.

This view was echoed by a number of other organisations.

83. The Women's Policy Group NI also highlighted the need to explore the nuances between honour-based abuse and how it can relate to stalking.
84. The Department agreed with the views regarding victim-led legislation stating that the protection of victims of stalking is at the heart of the legislation and it is committed to working with the voluntary organisations and justice partners to ensure that all victims have the protection they need and deserve.
85. The Women's Policy Group NI also referred to the Home Office policy of No Recourse to Public Funds and stated that guarantees are needed for women with uncertain immigration status so that they can seek justice without their cases being reported to the Home Office. NIWEP referred to CEDAW General Recommendation 35 that specifically states that access to "all legal proceedings, protective and support measures and services concerning victims/survivors respect and strengthen their autonomy" should be available irrespective of residency status.
86. In response the Department advised that immigration is not a devolved matter and issues should be raised directly with the Home Office.

### **Paramilitary Links to Stalking**

87. Victim Support NI, the Women's Aid Federation and the Women's Policy Group NI all highlighted the particular context of NI and the links between some perpetrators and paramilitary groups and indicated that the particular circumstances faced by some victims needed to be recognised and addressed.
88. The Women's Aid Federation outlined that in one particular area of Northern Ireland there are up to 20 women who are facing threats from ex-partners who are members of a paramilitary organisation. The women have no voice, are

living in fear and threat and face a range of stalking behaviours. The stalking behaviours also continue when ex-partners are in prison and the women are warned that they cannot leave the area as they will always be found.

89. Victim Support NI stated that it was important that risk factors relating to a stalker's connection to paramilitary organisations are recognised and safety planning adapted accordingly.
90. In response the Department stated that the provisions of the Bill will apply equally to all members and sections of society.

## **Committee Consideration of Clause 1**

91. The Committee took the opportunity to explore a number of the issues arising from the written evidence in more detail during the oral evidence sessions with the Law Society, Victim Support NI, the Women's Aid Federation, the Suzy Lamplugh Trust, HRe NI/Cara Friend and the Rainbow Project, the Multi-Agency Stalking Project in Hampshire, the Women's Policy Group NI, La Dolce Vita Project, Ann Moulds from Action Against Stalking Scotland, the NI Human Rights Commission and the PSNI.
92. The Committee also wrote to the Department requesting additional information and clarification on a number of areas including what programmes or services are currently available for perpetrators of stalking in NI.
93. Having considered the written and oral evidence received and the Department's written responses the Committee sought further information and clarification on some aspects of Clause 1 when officials attended the meetings on 14 October and 4 November 2021.
94. The Committee discussed the meaning of the word "fear" and whether this was too broad a term, and why the term "reckless" as a component of the Clause 2 offence is not replicated in the offence of stalking at Clause 1. The Department clarified that, in its view, reckless behaviour would be covered under Clause 1 under "a reasonable person ... would consider to be likely to cause ... fear, alarm or substantial distress" and indicated that it is capturing the impact of the behaviour rather than trying to define the purpose behind it.

95. The Committee also sought and received confirmation that the definition regarding dwelling does not distinguish between an owner-occupied dwelling, a rented or leased dwelling, a dwelling that someone was visiting or hiring, for example, if on holiday in rental accommodation and covers all these scenarios.
96. The Committee commissioned a research paper on online trolling and abuse to assist its consideration of the issues raised in this regard, particularly in relation to the use of anonymous accounts and the need to hold social media providers to account, both within the context of the Stalking Bill and also more widely. The research paper compared the laws to tackle online trolling/abuse available in other jurisdictions including the UK and the Republic of Ireland, outlined examples of international good practice in this area and clarified what powers are reserved or devolved and what areas the Assembly can either influence or take action on.
97. The research paper outlined that the general principle is that what is illegal offline is also illegal online and highlighted that, depending on the nature and content of the trolling and online abuse, it may constitute criminal activity under existing legislation including the Malicious Communications (NI) Order 1988, the Protection from Harassment (NI) Order 1997 and the Communications Act 2003. The Committee therefore sought clarification from the Department regarding whether there is a need for specific legislative provision for online offences that are already criminal offences offline and whether there are any legislative gaps relating to online trolling and abuse in other pieces of legislation that falls within its remit that needed to be addressed.
98. In response the Department confirmed that specific legislative provision for online offences that are already criminal offences offline is not required and in the context of the stalking legislation it would be possible to secure a successful conviction based on online stalking behaviour. The Department also advised that no legislative gaps had been identified in terms of legislation within its remit. Noting that telecommunications legislation is a reserved matter it provided further details of the work being undertaken in relation to the Department for Digital, Culture, Media and Sport proposed Online Safety Bill which will establish a new regulatory framework to tackle harmful content online and the work the UK Government is undertaking with the Law Commission in

England and Wales to ensure the criminal law is fit for purpose to deal with online communications.

99. **The Committee notes the widespread support for the introduction of separate legislation to deal with stalking and the provision of a stalking offence in Northern Ireland.**
100. **A number of organisations including the Women’s Policy Group NI, the Women’s Aid Federation and La Dolce Vita Project undertook research and surveys into the experiences of the individuals whom they support and provided personal testimonies and detailed examples as part of the evidence that they submitted. Committee Members also met privately with a number of individuals to hear their experiences and views on the proposed legislation.**
101. **The Committee is acutely aware of how difficult it was for those individuals to relive their experiences and again wishes to place on record its appreciation of them doing so. There is no doubt that those conversations and the first-hand evidence provided by the organisations improved Members’ understanding of the myriad ways in which stalking manifests itself and the devastating impact it has on the individuals who are subject to it and it reinforced the need to have effective legislation in place to deal with the issue:**

*“I am constantly looking over my shoulder and feel I am being watched. I am scared to go anywhere not public. I am anxious, stressed and scared. I’m not sure what will happen next. I feel like moving away and telling nobody due to fear. I am exhausted living in a state of fear.”*

*“I feel I have to convince people of everything that has happened to me all of the time”.*

*“This law will allow victims of stalking behaviour to attempt to live a normal life and go about doing daily tasks as it’s their human right. At present harassment laws are no use whatsoever in tackling stalking behaviour such as following, spying etc.”*



*“Stalking is serious, not only in the form of making someone uncomfortable but it takes away the feeling of freedom. Living with looking over the shoulder because of their imbalance and lies they have told to paramilitary groups or others is devastating not only to a person’s self-esteem and emotional well-being to the core of a person’s being. This would be a small step in the right direction”.*

*“The Protection from Stalking Bill would have made a world of difference in my situation”.*

102. **The Committee also appreciates the time and effort the Women’s Policy Group NI, the Women’s Aid Federation and La Dolce Vita took to compile the views of victims of stalking given the lack of information specific to Northern Ireland in this respect.**
103. **Stalking is fixated, obsessive, unwanted and repeated behaviour which often escalates quickly. It is insidious and terrifying for victims and there is no place for it in our society. The effect of such crimes is clear and can have a profound and lasting impact on victims that cannot be minimised in any way. It is the view of the Committee that the current law does not offer adequate protection and the need for robust legislation to provide the necessary tools for the criminal justice agencies to tackle stalking behaviour, take account of patterns of such behaviour over time, and bring the perpetrators to justice with penalties that reflect the seriousness of the offence is abundantly clear.**
104. **The Committee believes that the new offence will address gaps in the legislation, enable more effective action to be taken against perpetrators and will enhance the protection and access to justice provided to victims by the justice system.**
105. **The Committee agreed that it is content to support Clause 1 as drafted. One Member, Ms Sinéad Bradley MLA, registered her reservations about Clause 1 with regard to the descriptors.**

## **Clause 2 – Offence of Threatening or Abusive Behaviour**

106. Clause 2 subsection (1) creates the offence of threatening or abusive behaviour, subsection (2) provides a defence for a person charged with the offence to show that the behaviour was reasonable in the particular circumstances, subsection (3) describes the behaviour which can consist of a single act or a course of conduct (two or more occasions) and subsection 4 provides the penalty for the offence.
107. A range of organisations welcomed the provision of this offence that can be used for a single act including the PSNI, the PPS, the Probation Board, Victim Support NI, Women's Aid Federation, the Women's Policy Group NI, Lisburn and Castlereagh City Council and the Belfast Area Domestic & Sexual Violence and Abuse Partnership. Concerns were however raised in relation to the breadth of the offence and its use in Scotland in other circumstances not involving stalking behaviour, the fact that it can apply to a course of conduct and not just a single incident and whether the reasonable person test could be strengthened.
108. The Christian Institute NI is of the view that the proposed offence with its low threshold, broad scope and significant penalties risks restricting freedom of expression and lawmakers have a responsibility to ensure the public are free to disagree with each other and be able to debate issues without the threat of censure through the criminal law. It therefore recommended that a more targeted offence should be considered.
109. The Institute noted that the offence as drafted is based on Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and this is one of the most common offences that people are charged with by Police Scotland. It was introduced after a court judgement was believed to make certain behaviour more difficult to criminalise using an existing breach of the peace offence and is more commonly used in Scotland for behaviour unrelated to stalking. According to the Institute the impact of the proposed offence as drafted will be much more

extensive than stalking behaviour and the rationale for importing the offence to Northern Ireland is not clear.

110. The Department outlined that during policy development and drafting of the Bill officials worked closely with officials in the Scottish Government on the success of their stalking offences. Scottish officials advised that, when drafting what became the Section 38 offence in their legislation, account was taken of the fact that it was very difficult to use breach of the peace to prosecute domestic abuse in cases where there was no physical violence. The Bill provides for the offence of threatening and abusive behaviour as an alternative conviction for the domestic abuse offence and also the stalking offence and it will be for the court to decide whether any behaviour constitutes behaviour that a reasonable person would consider to be “threatening or abusive” using the reasonable test at Clause 2(1)(a).
111. The Suzy Lamplugh Trust welcomed this offence of threatening or abusive behaviour but was concerned that it not only applies to a single incident but also to a course of conduct and recommended that this element be removed to provide clarity that where there is a course of conduct this is always treated as stalking. The Trust also noted that the offence does not include serious distress (impact on day-to-day activities) but experience shows that a course of conduct without serious distress is hardly ever seen. In its view the ‘downgrading’ of the offence from stalking to the offence of threatening or abusive behaviour is likely as seen in many cases of stalking being charged as harassment in England and Wales.
112. The Trust suggested that if this Clause is retained as drafted a reasonable person test as recently included in the Scottish hate crime legislation could be included. This would be in addition to the reasonable person test in 2(1)(b) which relates to the potential impact rather than the nature of the behaviour.
113. The Department advised that it would be for the court to decide if the offence of threatening or abusive behaviour should be used as an alternative conviction for the Clause 1 stalking offence. Regarding the reasonable person test, the Department outlined that colleagues in the Scottish Government are not sure that the addition of such a test adds a great deal in the context of a ‘threatening

or abusive behaviour' offence. There is an 'implied reasonable person' test already in the offence and if a court was of the view that the behaviour was not behaviour that a reasonable person would consider to be "threatening or abusive" then the test at Clause 2(1)(a) would not be met.

114. Ann Moulds from the Scottish Charity Action Against Stalking indicated in her oral evidence that she was not sure how many incidences are taken under Section 38 of the Scottish legislation (offence of threatening or abusive behaviour) but suspected it is probably quite a lot and expressed the view that sometimes it is what is easier for the police and it is much easier to prosecute under this offence as it does not have as high a test.
115. In response the Department stated that compared to the current harassment offence, this new offence will see an increase to 5 years (compared to 2 years) on conviction on indictment and an increase to 12 months (compared to 6 months) on summary conviction and that while it may be an alternative offence to the stalking offence it does carry substantial penalties.

## **Committee Consideration of Clause 2**

116. The Committee discussed the breadth and scope of this offence with officials when they attended the meeting on 14 October 2021 including how a one-off event relates to stalking and whether a single event online that is threatening or abusive could be captured by this offence and the operational challenges this may cause. The officials confirmed that online behaviour was covered and emphasised that the focus of the legislation is on the impact on the victim and recognising that there are some circumstances in which a single event can cause an individual fear, alarm or serious distress.
117. The Committee also sought additional information regarding how the offence would apply in practice, the 'implied reasonable person' test already in the offence, how many cases had been taken under this offence in Scotland and whether it could be used as an alternative to prosecution under the harassment legislation for acts other than stalking.
118. The Department confirmed that the intent plus the behaviour and the impact on the person, as set out in Clause 2, all had to be met for the offence to be

committed and outlined the test to be determined for reasonableness. They stated that the offence aimed to deal with potentially serious behaviours that are damaging to individuals but that would not necessarily meet the threshold of being a course of conduct and advised that it had, on occasion, been used in Scotland for domestic abuse offences and for stalking offences that did not meet the threshold.

119. In relation to the harassment legislation, the Department views this Bill as complementing it, noting that it may give the police another option when considering taking forward a prosecution. Officials also confirmed that while this offence is in stalking legislation, its focus is on a single event of threatening or abusive behaviour with the intention of causing a reasonable person to suffer fear or alarm, or if they are wholly reckless in that way, which could apply more broadly.
120. At the request of the Committee the Department sought further advice on why the reference to “the reasonable person” in Clause 2(b) is worded differently to that in Clause 1 to ensure that no lacuna was being created by the use of different wording. The Department subsequently confirmed in its letter dated 10 November 2021 that under Clause 2 the prosecution has to prove what the accused person did, how a reasonable person would be affected by what was done and the accused person’s state of mind. It may also have to rebut the defence by proving that what was done was not reasonable. Clause 2(1)(b) should not be read as “implying a reasonable victim” as such but rather as a mechanism for specifying the scope of the behaviour to be captured. It is a different and very specific use of the “reasonable person” test and injects an objective element that must apply to the Clause 2 offence. The Department was therefore satisfied that no lacuna is created and did not believe there was a need to change the wording which had been carefully drafted.
121. **Having considered the issues raised in the evidence, the Department of Justice’s response and the further information and clarification it had provided, the Committee agreed that it is content with Clause 2 as drafted.**

### **Clause 3 – Special Measures Directions**

122. Clause 3 amends the Criminal Evidence Order 1999 to provide that all victims of an offence of stalking will have automatic eligibility for assistance (such as the use of live links or screens at court) when giving evidence in proceedings.
123. While the provision of automatic eligibility for special measures in stalking cases was widely welcomed, several organisations who support victims raised a number of operational issues in relation to special measures.
124. Victim Support NI stated that it is vital that if special measures are to be offered they should be fit for purpose and failings in technology must be urgently addressed by the courts to ensure that victims who avail of special measures to give evidence are not disadvantaged due to inadequate technology. The organisation also highlighted that people who are stalked by ex-partners have to go to civil and family courts to obtain divorce or establish contact rules. This experience is equally traumatic to that of criminal trials and the need for special measures is the same therefore the Committee may wish to consider whether special measures should be extended to victims of stalking for the purposes of civil and family cases in which their stalker is also party or involved.
125. The Women's Aid Federation, the Women's Policy Group NI and NIWEP all highlighted that special measures provisions need to be available and resourced appropriately so the victim is not let down on the court date when they are not provided. They indicated that the problem is most acute in the Family Courts where access to special measures is so poor that survivors are being attacked, abused, harassed and left too frightened to effectively advocate for the on-going safety of their child. Failure to ensure parity in the court systems will leave survivors at continued risk of harm and an inconsistent approach to safety between the court systems and stated that there needs to be a guarantee of special measures for victims and survivors in all courts.
126. HERe NI/Cara Friend also agreed that special measures need to be adequately resourced.
127. NIWEP raised the issue of a lack of awareness of the availability of special measures stating that there is evidence of this and it is essential that

communication is strengthened so that all complainants are aware of the options available. NIWEP recommended that responsibility for information and communication is assigned to a specific agency within the criminal justice system or alternatively responsibility for communication regarding all procedures and services should lie with the Department of Justice as part of its role in providing guidance on this legislation.

128. In response to the issues raised the Department of Justice confirmed that court rules for family proceedings already make provision for a court to allow a witness to give evidence by video link and other special measures can be considered by the court on a case by case basis. The Department also noted the call for adequate resourcing for special measures and advised that it is working with all agencies and partners in the Stalking Implementation Oversight Group. The Department also intends to carry out a public awareness campaign in conjunction with the Bill receiving Royal Assent and will be providing guidance for criminal justice partners.

### **Committee Consideration of Clause 3**

129. The Committee welcomes the provision of automatic eligibility for special measures assistance for all victims of an offence of stalking when giving evidence in proceedings and notes that procedures are already in place to provide for a court to consider special measures in family proceedings.
130. The operational difficulties with, and the lack of awareness of, the provision of special measures has been raised with the Committee in the past, most recently in the context of the Domestic Abuse and Civil Proceedings Act, and the Committee expects the NI Courts and Tribunal Service to ensure that appropriate and effective special measures are provided as and when required.
131. The Committee discussed the provision of special measures with departmental officials during the oral evidence session on 14 October 2021 and in particular how the Department would ensure that witnesses and victims or their representatives are aware that they may avail of special measures and who was responsible for this.

132. The Department outlined the importance that special measures have in ensuring that victims receive appropriate support and are facilitated to give evidence in a safe and secure way and advised that, in cases of stalking, the availability of special measures is particularly important as very often, by the time victims come to the police or other agencies, they have been seriously damaged and need additional protection and support. In relation to awareness-raising the officials outlined that, given automatic eligibility is provided for in the legislation, the expectation was that the statutory agencies such as the police and the PPS would ensure that victims are informed. Victim Support NI and other victims' organisations will also provide advice. The Department confirmed its intention to undertake a public awareness campaign to inform the legal profession and the wider public of the extent and scope of the legislation and this would also provide an opportunity to raise awareness of the availability of special measures.

**133. The Committee agreed that it is content with Clause 3 as drafted but reiterated the importance of implementing a programme of work to raise awareness of special measures.**

## **Clause 4 – Alternative to Conviction of the Domestic Abuse Offence**

134. Clause 4 adds the offences of stalking and threatening and abusive behaviour, as alternative convictions in a trial of the domestic abuse offence under the Domestic Abuse and Civil Proceedings Act (NI) 2021.

135. Women's Aid stated that if this is used as an alternative to a conviction of domestic abuse then it needs to take adequately into account the offence and must not be seen as a lesser offence. This view was supported by NIWEP and the Women's Policy Group NI. NIWEP also recommended that where this is used the reasons why it was deemed that the domestic abuse offence was not proven should be recorded in the conviction. HERe NI/Cara Friend indicated that if used as an alternative to a conviction of domestic abuse it must not create a hierarchy of offences.



136. The Department outlined that it was envisaged that the offence of stalking or the offence of threatening or abusive behaviour would only be used as an alternative to the domestic abuse offence where it is not possible to provide evidence of the required personal connection between the individuals. A conviction under the domestic abuse offence would not therefore be possible but it is considered that the behaviour would amount to an offence under Clauses 1 or 2. It is expected that the number of instances of this will be low given that both the police and the PPS will have to be satisfied in bringing forward a case under the domestic abuse offence that the two individuals are (or have been) partners, family members or in an intimate personal relationship. It will be for the court to determine, on conviction, that an alternative offence should be provided for and this will only take place when all the evidence of the case has been considered.
137. The Department advised that the reason for electing for an alternative offence should be set out as part of the case. Operationally it would be difficult, and likely prohibitively expensive, to record why the domestic abuse offence was not proven on an individual case basis and pointed out that it may also be as a result of a jury decision where the offence is tried in the Crown Court.
138. **The Committee noted the position as outlined by the Department and agreed that it is content with Clause 4 as drafted.**

## **Clause 5 – No Right to Claim Trial by Jury**

139. Clause 5 amends Article 29(1) of the Magistrates' Courts (NI) Order 1981, the effect of which is to prohibit those accused of the stalking offence or offence of threatening and abusive behaviour, before a magistrates' court, electing for trial by jury at a Crown Court.
140. The prohibition of electing for a trial by jury in the Crown Court was welcomed as a positive measure for victims.
141. The Law Society did highlight that in some instances there are prolonged and repeated offences of harassment by individuals and if the offence is purely

summary in nature then the court will only have limited power to deal with the offender. If the status of the charge was hybrid rather than summary this would allow for sentencing to be appropriate with regard to prolonged and repeat offenders and is something that should be considered.

142. Women's Aid raised an issue with regard to the knowledge and understanding of Judges and stated that it is paramount that they are aware of stalking behaviours, signs and high-risk indicators.
143. The Department confirmed that the offences in the Bill are triable either way i.e. by summary and indictment and that it will be working with the Judicial Studies Board to develop appropriate awareness raising sessions.
144. **The Committee agreed that it is content with Clause 5 as drafted.**

## **STALKING PROTECTION ORDERS**

145. There is clear support for the introduction of SPOs and for the police to make the application to the Court for such an order.
146. All the organisations that contributed to the Women's Policy Group NI written submission welcome the introduction of SPOs as does the Rainbow Project and HERe NI/Cara Friend.
147. Victim Support NI also welcomed the introduction of SPOs stating that they are an additional tool for police and courts to take immediate action to protect victims and prevent harm where stalking behaviour and risk factors have been identified.
148. Belfast Domestic & Sexual Violence and Abuse Partnership believes they will provide increased protection for victims and START 360 also views them as key in providing protection.
149. The Suzy Lamplugh Trust welcomes the introduction of SPOs alongside the stalking offence and sees this as a significant step forward for victims of stalking in Northern Ireland.

150. The Multi-Agency Stalking Project supports the implementation and application of SPOs which, in its view, are a necessity for stalking victims.
151. The Probation Board stated that the introduction of SPOs and interim SPOs supports the seriousness of stalking and the fact it is a behaviour which instils fear and submissiveness in victims.
152. The Women's Aid Federation views SPOs, which allows the police to apply to a civil court on a victim's behalf, as a stronger legal protection than a civil injunction. The advantage of SPOs is that they give victims protection where police consider an alleged offender to be a genuine threat. It will have a positive impact on victims of stalking by giving them faster access to a protective order through reporting stalking to the police rather than having to apply to a court on their own behalf. It will prevent stalkers' behaviour from escalating and hopefully encourage more stalking victims to come forward in the knowledge something can be done to help them.
153. Lisburn and Castlereagh City Council supports the introduction of SPOs highlighting that they will provide protection to a person at risk of stalking by enabling early police intervention and addressing stalking behaviours before they become entrenched or escalate in severity.
154. While NIWEP welcomes the proposal to introduce SPOs it highlighted the need for the system to operate effectively so that orders can be issued in a timely manner and that police and courts are trained in both applying for orders and supporting victims through the process.
155. A number of issues were raised in relation to SPOs and interim SPOs, some of which focused on how the process will work in practice.

## **Clause 6 – Meaning of Act Associated with Stalking and Risk Associated with Stalking**

156. Clause 6 gives a definition of the acts and risk associated with stalking for the purposes of this section and sections 7 to 10.

157. The key issues raised by organisations related to the standard of proof that will apply to SPOs, the need to communicate with victims and keep them updated on the position regarding an SPO and whether a rehabilitation period is required in the legislation.
158. Both the PSNI and the Law Society questioned whether SPOs are civil applications given Clause 13 provides that a breach is a criminal offence and clarification was sought regarding whether the standard of proof before the magistrates' court is the civil standard or 'a balance of probabilities'. The Law Society also stated there was a need for a rehabilitation period to be included as this would not be dealt with in existing legislation and suggested that the relevant period may be 12 months from the date that the original order expires, although this may be influenced by any breaches of the order.
159. The Department clarified that SPOs will be civil orders but a breach of a SPO will be a criminal offence and it is likely that the courts will apply the criminal standard of proof i.e. beyond reasonable doubt to the fact-finding elements of a 'full' SPO application (whether the defendant has carried out acts associated with stalking and whether the defendant poses a risk associated with stalking to another person). In relation to an 'interim' SPO application it is likely that the courts will not apply the criminal standard to the fact-finding elements but rather a lower test, namely treating it as an exercise of judgement or evaluation. It also confirmed that a rehabilitation period will apply to this type of offence and there is an on-going project in the Department to review rehabilitation periods.
160. The Council of District Judges (Magistrates' Court) in NI noted that the England and Wales Act defines a risk associated with stalking 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" and was of the view that this appears to be a more subjective test than that provided for at 6(2)(j).
161. In response the Department outlined that Clause 6(5) provides "the acts mentioned in subsection (3) may be acts which the persons knows, or ought to know, are unwelcome to a person even if, in other circumstances, the acts would appear harmless in themselves."

162. The NIHRC was concerned that SPOs do not explicitly include provision for the potential use of intermediaries in stalking. Considering stalking is a controlling behaviour it may be possible that the perpetrator may procure an individual to carry out offences and, noting that the Protection from Harassment (NI) Order 1997 extends to third parties in this regard, the Commission recommended that consideration is given to amending the Bill to include provision for third parties carrying out offences on behalf of the perpetrator.
163. The Department stated that no specific reference to “third party” is required as Clause 1(4)(j) would cover a situation where A make use of a proxy C to stalk B. Clause 6(2)(j) is also relevant.
164. Other points covered in the evidence received included a recommendation from Victim Support NI that, as a rule, victims are communicated with effectively to keep them updated about any application and a recommendation from the Suzy Lamplugh Trust that guidance is put in place for an appropriate professional with stalking specific training to complete a comprehensive risk assessment.

## **Committee Consideration of Clause 6**

165. When officials attended on 14 October 2021 the Committee sought further information and clarification from the Department on why SPOs are civil orders, what difference there is in the evidence threshold for a SPO and an interim SPO and what standard of proof the court will apply when considering an application for an order.
166. The departmental officials outlined that SPOs will often come in advance of a conviction and are a mechanism that the police can apply for when there is an assessment that there is a continuing or increasing risk to an individual. The focus is on protecting the victim while the criminal case is progressing. As civil orders they require a lower burden of proof and can be applied for more quickly. They can also be used in cases of low level behaviour to protect the victim, disrupt and prevent the stalking behaviour and encourage and assist the perpetrator to modify and change their behaviour. The interim SPO is designed to enable the police to act where there is an immediate and urgent need to provide protection straight away while the application for a full SPO is being

taken forward and the evidential threshold for an interim SPO will be lower than for a full SPO. The judge will make a judgement based on the evidence provided by the police in each case.

167. Whether there is a need to factor a rehabilitation period into the Bill was also discussed and the officials confirmed that rehabilitation applies only where there is a conviction beyond a certain length. The rehabilitation periods will apply to a conviction under this legislation as they would for any other offence.
168. **The Committee supports the introduction of SPOs and interim SPOs as a tool to enable the police to offer a victim immediate protection from continuing or increasing risk of harm and also to enable the police to proactively intervene earlier and disrupt stalking behaviour before it escalates or becomes entrenched.**
169. **The Committee agreed that it is content with Clause 6 as drafted.**

## **Clause 7 – Applications for Orders**

170. Clause 7 sets out who may apply for an order, what a stalking protection order is, and the grounds on which an application for an order may be made.
171. The key issues raised in the evidence related to whether the Chief Constable is able to delegate authority to make an application for a SPO given the wording in the legislation, the need for the views of victims to be taken into account and for victims to be engaged in the process and the provision of adequately resourced Stalking Behaviour Perpetrator Programmes.
172. The Belfast Area Domestic & Sexual Violence and Abuse Partnership, NIWEP and the PSNI highlighted the need for greater clarity regarding the reference to 'Chief Constable' in respect of who can seek a SPO stating that it is operationally essential that the decision-making is capable of lawful delegation to make the process efficient either within the legislation or the accompanying guidance.

173. The Department indicated that this is an operational issue for the Chief Constable and noted that in England and Wales an application for an order must be authorised by an officer not below the rank of Superintendent. It advised that it will be working closely with operational partners on the use of SPOs when the guidance outlined in Clause 17 is being produced.
174. The PSNI also requested clarification on the relationship between 7(3) – police can only seek orders on those resident in NI – and Clause 3(4) and Clause 11 5(a) and (b) – interim orders regarding all of the UK. Whilst noting that the provisions appear to reflect Section 10 of the Domestic Abuse and Civil Proceedings Act it sought confirmation that provision cannot be made for the PSNI Chief Constable to seek to make an application for an order on a ‘stalker’ resident elsewhere in the UK rather than NI and indicated that this is specifically relevant in respect of cyber stalking.
175. The Department confirmed that the PSNI can only make an application for an order against a person who resides in NI or who the PSNI believe is in or intending to come to NI. Clause 11(5)(a) and (b) requires the person to comply with the prohibitions or requirements in the order in all parts of the UK and everywhere outside the UK to ensure that if they travel outside the UK they are still prohibited from making any contact offline or online with the victim.
176. The Suzy Lamplugh Trust recommended that the victim is fully engaged in the process, particularly in the development of prohibitions and positive requirements. Women’s Aid Federation, the Women’s Policy Group NI and HERe NI/Cara Friend also believe that it is essential that the views of victims are sought and taken into account before any application for a SPO, with the option for the victim to be represented within any proceedings, and considers it to be best practice for the victim/survivor’s consent to be obtained and only in certain exceptions would a SPO be pursued without consent. While agreeing that the police should be the primary applicant Victim Support NI suggested that consideration could be given to whether victims should also be able to apply in person for a SPO if they wished to do so given anecdotal evidence from victims of police officers with inconsistent understanding of stalking and its seriousness. The Women’s Aid Federation also outlined potential concerns around adverse impact on the implementation of Domestic Abuse Protection Orders (DAPOs)

and Notices and stated that there should be no clash between the application process for a DAPO and a SPO.

177. The Department outlined that the decision to issue a SPO rests with the police and this takes the onus away from the victim. Concerns about the victim having to make such a decision which could antagonise the perpetrator and increase the risk of serious harm to the victim were raised in the consultation and informed the approach adopted. The statutory guidance to be published will provide information about the procedure for applying for a SPO as well as providing a practical toolkit for police to use when making applications and the Department anticipates that, while this guidance has yet to be developed, the victim will be consulted on the measures being considered by the police to keep them safe.
178. In response to comments by the Women's Aid Federation that SPOs should not replace a criminal conviction of stalking the Department agreed stating the purpose of the SPO is to offer immediate protection to victims who are at risk of harm whilst an investigation is ongoing and it is not intended to replace a criminal conviction.
179. Parenting NI stated that parental access requirements should be considered in all orders as a legal duty and it should not be the case that a person cannot have any access to the other parent. It is important that the legal system recognises that while no individual has the right to harass or stalk another person, being convicted or doing so does not immediately also revoke their rights to access to their children as parents.
180. The Department outlined that matters which the court is required to consider when determining contact arrangements are a matter for the Department of Finance rather than it but highlighted that the legal framework already provides for the welfare of the child to be the paramount consideration.
181. While welcoming the ability to impose positive requirements including attending a perpetrator intervention programme, a number of organisations highlighted the current lack of such programmes in Northern Ireland and raised the need for adequate funding.



182. The Suzy Lamplugh Trust stated that positive requirements such as engagement in a perpetrator intervention programme should be subject to professional risk assessment and such programmes must be adequately resourced and quality assured, with built in protections for victims. They also should be tailored and run by experts who understand the manipulative nature of stalkers.
183. Both the Rainbow Project and HERe NI/Cara Friend indicated that stalking behaviour or domestic abuse behaviour programmes are not currently available across NI and the majority of services and programmes are often unavailable to those who are experiencing abuse from a same-sex abuser or are the perpetrator. Such programmes also need to be adequately resourced.
184. Women's Aid Federation and the Women's Policy Group NI also have concerns that the Stalking Behaviour or Domestic Abuse Behaviour Management Programmes will involve a lot of resources and services across all areas of NI are not currently available. They highlighted that an obligation to manage an individual and report on progress and engagement is a big responsibility for those delivering the programmes, many of which are delivered through the voluntary sector, and resourcing is an issue.
185. The Law Society agreed that adequate resources are needed to provide services to persons subject to SPOs to help them overcome their behaviour and avoid re-offending.
186. Victim Support NI stated that perpetrator programmes should be tailored and run by experts who understand the manipulative nature of stalkers and they must be adequately resourced and quality assured, with built in protections for victims.
187. The Multi-Agency Stalking Project in Hampshire advised the Committee that developing and making effective treatment programmes available is one of the challenges it is currently working through.
188. The Department advised that it is committed to working collaboratively with partner organisations to develop and promote interventions specifically for

stalking perpetrators and sees the Probation Board as a key partner in the development of such programmes.

189. In its written submission the Probation Board welcomed the fact that courts can impose requirements as well as prohibitions and believes that most perpetrators have the capacity to change and they can be supported in this process through a range of controls. The Probation Board stated that requirements such as engagement in a behavioural change programme can have a positive impact in reducing abusive behaviour and protect further victims.

## **Committee Consideration of Clause 7**

190. The Committee took the opportunity to discuss and seek clarification on a number of issues with departmental officials at the meetings on 14 October and 4 November 2021.
191. The officials confirmed that the police must make the decision to apply for a SPO or interim SPO based on an effective risk assessment but provided reassurance that a victim would be part of the process. They also confirmed that the standard of proof required will not be “beyond reasonable doubt” but instead will be a lower standard given it is a civil order.
192. In relation to the costs of an application these will be met by the PSNI which is using costings from VOPOs to inform the estimated cost of SPOs. When questioned on whether there is any danger that budgetary constraints may prevent the police from applying for orders the officials advised that, while there is not expected to be a large number of applications and associated costs in the early stages of the legislation coming into effect, the position regarding the legislation in general and the use of SPOs would be monitored.
193. The Department also clarified that while the Bill states that “the Chief Constable” may apply, regulations will be drafted to cover the Chief Constable’s powers and how these will operate and this will allow the Chief Constable to delegate this power to his officers.
194. **The Committee supports placing the onus on the police rather than the victim to apply for SPOs and interim SPOs but welcomed the reassurance**

**that victims would be part of the process. The Committee believes that data collection and monitoring to ensure SPOs and interim SPOs are being used appropriately and effectively is an important requirement and therefore has agreed that these should be covered in the Bill. Further detail on this is included in the section of the report covering implementation of the legislation.**

195. The Committee agreed that it is content with Clause 7 as drafted.

## **Clause 8 – Power to make Orders**

196. Clause 8 sets out the powers of the court to make a SPO; the grounds on which the court may make an order; and what may be included in the terms of an order. The orders can place prohibitions on the defendant and can require them to undertake assessments or attend perpetrator programmes.

197. The Women’s Policy Group NI and Women’s Aid Federation suggested a range of prohibitions which could be included in an order such as the removal of keys to the victim’s home; prohibition on them approaching or entering the home; damaging the property or evicting or excluding the victim from the home; barring contact with the victim and children by text, phone or electronic means; and prohibition from approaching and entering women’s workplace, children’s school, college, university, gym, nursery, LGBTQ+ social spaces etc. They consider that it should be possible to impose prohibitions on the subject of an order that are necessary for the order to be effective.

198. In response, the Department stated that an order can prohibit the defendant from doing something, as far as is necessary, to protect the other person from risk of stalking and could, for example, include prohibiting the defendant from:

- entering certain locations or defined areas where the victim resides or frequents
- contacting the victim by any means, including via telephone, post, email, text messaging or social media

- physically approaching the victim at all or to within a specified distance.

199. The Department pointed out that this is not an exhaustive list and other prohibitions, such as those suggested by the Women's Policy Group NI and Women's Aid, could be considered by the court in order to protect the victim.
200. The Probation Board welcomed the fact that courts can impose requirements as well as prohibitions and pointed out that requirements such as engagement in a behavioural change programme can have a positive impact in reducing abusive behaviour and further protect victims. The Board advised that prohibitions and requirements should only be imposed if they are deemed necessary to protect the victim from harm; are effective in managing the risk towards the victim; and are clear, realistic, and readily capable of compliance. No prohibitions or requirements should be oppressive but should be proportionate and tailored to the facts of the case.
201. The Council of District Judges (Magistrates' Court) in NI questioned whether the potential limit to the SPO at 8(4), which provides that prohibitions or requirements included in the terms of the order must avoid conflict with the defendant's religious beliefs, their work and their education, as far as possible, is necessary. They stated that the courts are well versed in imposing bail conditions, Violent Offences Prevention Orders (VOPO), Sexual Offences Prevention Orders (SOPO) and restraining orders and can be trusted not to make any orders which are impossible to comply with or are, in the circumstances, disproportionate.
202. The Suzy Lamplugh Trust recognised the importance of not impacting on a perpetrators religious beliefs, education or place of work but advised that it must always be considered that this may be manipulated to enable the stalking behaviours to continue.
203. The Department's written response noted that 8(2) requires that the court must be satisfied that the defendant has carried out acts associated with stalking; that they pose a risk of stalking to another person; and that each of the prohibitions and requirements included within the terms of the order is necessary to protect the other person from that risk. The Department further advised that the

purpose of 8(4) is to ensure that the terms of the order are proportionate and it is designed to enable workability of orders and to avoid conflict with the European Convention on Human Rights (ECHR).

204. The NIHRC advised that the inclusion of offences retrospect to the enactment of the legislation engages Article 7 ECHR, which prohibits the retrospective application of the criminal law where it is to an accused's disadvantage. The Commission was concerned that the Bill currently provides that a SPO can be sought for behaviour before the commencement of legislation even if there is no evidence of it having continued after the change in law. The Commission recommended that an amendment to the Bill should be considered to clarify that behaviour amounting to stalking offences must be satisfied after the change in legislation for the application for a SPO; only then can previous behaviour be considered retrospective of the change in law.
205. In response to this issue, the Department advised that Legislative Competence Advice prepared by the Departmental Solicitor's Office on the Bill outlines that behaviour that may be used to ground an application for a SPO or interim SPO under Clause 7 and behaviour which may be taken into account by a court in determining such an application under Clause 8 may have taken place before the coming into force of those provisions. It is not considered that this would contravene Article 7 of the Convention as that Article focuses on criminal offences and the historical evidence will be used in civil proceedings. Whilst breach of a civil order is a criminal offence, the conduct will inevitably arise post enactment of the Bill and, accordingly, it is not considered that any Convention issues arise in respect of the provisions.
206. A number of issues were also raised about the practical application of the provisions. The PPS questioned whether judges will be able to make SPOs of their own volition at the conclusion of criminal proceedings and whether prosecutors can make applications to the court for Judges to consider such orders and noted that this would be in line with the current processes in respect of applications for restraining orders. In response, the Department advised that there is no restriction as to the stage of the criminal justice process at which an order may be made, and, depending on the circumstances, an order could be made following conviction or acquittal. Applications are freestanding and the

Court has the power to consider an application and make a SPO at any stage, provided it is satisfied that the three criteria set out in Clause 7(2)(a) (b) & (c) of the Bill are met.

207. The PSNI advised that it would welcome clarity regarding how an order is served, at what point powers of the order come into force and how information on the positive obligations or requirements placed on an individual in an order can be effectively shared with the police. In respect of the latter point, it is the view of the PSNI that the agency, department or organisation providing the service should have responsibility to report non-attendance/non-engagement to police to effect the breach of an order.
208. The Belfast Area Domestic & Sexual Violence and Abuse Partnership also advised that it would welcome further information on how the process to obtain an order will work and pointed out that it needs to be as streamlined as possible to avoid any delays and unnecessary bureaucracy.
209. In response to the queries about how this will operate in practice, the Department advised that the statutory guidance provided for at Clause 17 will provide information about the procedure for applying for a SPO as well as providing a practical toolkit for police to use when making an application. The statutory guidance will be drafted in conjunction with criminal justice partners and agencies/organisations.

## **Committee Consideration of Clause 8**

210. The Committee had a lengthy discussion with officials at the meeting on 14 October regarding how the victim's and perpetrator or alleged perpetrator's rights would be balanced in the context of 8(4)(a) which states "prohibitions or requirements must, so far as practicable, be such as to avoid conflict with D's religious beliefs and interference with any times at which D normally works or attends an educational establishment" with D being the person against which the SPO is sought. Examples of when an order would conflict with a perpetrator's religious beliefs was sought to ascertain whether this may create a loophole that stalkers could exploit. Clarification was also sought regarding how SPOs would apply in a workplace and the role of employers.

211. Officials outlined that the aim of the clause is that, if work, education or religious access can be facilitated without impacting on the victim the expectation would be that would happen however the prime aim is to protect the victim and prevent the impact of stalking so if that cannot be done in a practicable way the SPO would prevent that access and the impact will be on the perpetrator. When the order is made it is a requirement on the perpetrator, or alleged perpetrator, with regard to their actions and what they are allowed to do and breaching the order will be a criminal offence. Ultimately the judge will determine what is practicable and individual rights will be considered.
212. The Committee returned to the issue at the meeting on 4 November and asked the officials what consideration had been given to removing subsection 4 from Clause 8 and what, if any, implications this would have. In response they reiterated that it is not a question that a perpetrator's religious or work rights take precedence. Essentially the order takes precedence but if it can be managed in such a way that it can provide the victim with protection whilst still allowing the perpetrator to exercise their human rights for worship or work that should be taken into account. Even if the subsection was removed from the Bill that consideration would have to take place anyway and the officials believed it was better to have it in the Bill as the wording "so far as practicable" makes it very clear that the pre-eminent responsibility is to protect the person from stalking.
213. Confirmation was also provided that, as SPOs are civil orders, behaviour that preceded the legislation can be taken into account and considered and it does not impinge on article 7 of the Convention.
214. **The Committee appreciates the need to ensure SPOs are workable and do not conflict with the ECHR however the confirmation provided by departmental officials that the key aim is to protect the victim and prevent the impact of stalking and it is not a question of a perpetrator's religious or work rights taking precedence was welcomed.**
215. **The Committee agreed that it is content with Clause 8 as drafted.**

## **Clauses 9 and 10 – Duration of Orders; and Variations, Discharges and Renewals**

216. Clause 9 sets out the period of time for which an order has effect. An order will have effect for a fixed period as specified within the terms of the order or until a further order is made.
217. Clause 10 sets out how a stalking protection order may be varied, renewed or discharged and who may apply for these measures.
218. The Women's Aid Federation and the Women's Policy Group NI advised that many women point out that placing a maximum time limit on an order leaves victims with severe anxiety and does not consider the toll that having to seek a renewal may have on a victim. Many women consider giving up employment or further education as a result of being stalked/harassed and the placing of a maximum duration may simply act as a 'bandage,' with them giving their employment up at a later stage due to the fear that has been placed on them.
219. A number of organisations including HERe NI/Cara Friend, Women's Aid Federation and the Women's Policy Group NI supported the renewal of a SPO when required and where considered proportionate. This should include the completion of a further risk assessment to identify any other incidents of stalking and the risk posed to the individual by the accused. Such an assessment should be trauma informed, robust and effective in identifying high risk indicators and also take into account safeguarding issues and offer continued protection for the victim.
220. In response, the Department stated that the police may apply to renew an order if the duration of the order is about to expire and they are satisfied that the renewal of the order is necessary to continue to protect the victim from the risk of stalking.
221. Victim Support NI questioned how Clause 9 will work in cases where a victim is stalked over a number of years and the perpetrator remains a risk to their safety. While recognising that prohibitions cannot be indefinite, especially in cases where there has been no conviction for any crime, Victim Support NI



stated that there is an obligation to preserve the life and safety of the victim and to minimise further harm to them.

222. Victim Support NI also suggested that a system should be put in place to communicate with victims where an order is set to run out or in the event that the order is to be changed substantially or shortened. Seeking and considering victims' views on the impact of their safety should be a mandatory part of this process. An obligation should also exist for police to contact victims to explain the contents of the SPO, its conditions, what constitutes a breach and how to report a breach.
223. In its response to these concerns, the Department pointed out that, if the threshold for an offence has already been met, a SPO should not be used as an alternative to prosecution for a stalking offence but could, however, be used to complement a prosecution of a stalking offence. The Department also advised that the issues raised will need to be included in training for criminal justice partners on the use of the new orders and will also be included in detailed departmental guidance to the Chief Constable on their use.
224. In its submission, the Council of District Judges (Magistrates' Court) in NI noted that Clause 10 is silent in respect of appeals which is in contrast to the 2019 Act as well as, for example, the Justice Act (NI) 2015 which does contain specific appeal provisions in respect of VOPOs made in the magistrates' court.
225. The Department acknowledged that an appeal provision is not on the face of the Bill but advised that, as an application for a SPO (and an interim SPO) are made by way of complaint, the appeal provision in Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 which states "an appeal shall lie to the county court from any order of a magistrates' court in proceeding to which this Article applies" will apply.

## **Committee Consideration of Clauses 9 and 10**

226. Section 7 of the Stalking Protection Act 2019 in England and Wales sets out the right of appeal against SPOs and interim SPOs and the Committee questioned the difference between this and an application for a variation to or discharge of a SPO provided at Clause 10. Officials clarified that a direct appeal would be

based on whether the judge had misdirected and the order is an inappropriate course of action and the appeal provisions in Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 apply. The guidance to be produced by the Department will cover the appeals process. Clause 10 provides for a modification to some of the restrictions, for example if there is a change of circumstances, and the judge will have to be satisfied that the variation would not create increased risk to the victim.

227. The Committee also sought clarification of whether SPOs and interim SPOs apply to the offence of threatening or abusive behaviour as well as the stalking offence. Officials confirmed that, in some circumstances, they could apply however Clause 2 tends to be about a single instance rather than a course of behaviour and therefore they were much more likely to apply to Clause 1.
228. **The Committee noted the responses by the Department to the issues raised and the additional clarification provided regarding the process for appeals or requests for modifications.**
229. **The Committee agreed that it is content with Clause 9 and Clause 10 as drafted.**

## **Clause 11 – Interim Stalking Protection Orders**

230. Clause 11 sets out a description of an interim stalking protection order. It also sets out the powers of a court of summary jurisdiction to make an interim stalking protection order; who may apply for an interim order, what may be included in the terms of an interim order and the duration of an interim order.
231. A number of issues relating to interim SPOs have been covered under Clauses 6, 7 and 8.
232. The Women's Aid Federation highlighted the importance of interim SPOs being available quickly to ensure that there are no gaps in a victim's protection and the Suzy Lamplugh Trust indicated that while interim SPOs are a useful tool whilst the full order is being applied for they are not a replacement.

233. The Department outlined that interim SPOs are temporary orders imposing prohibitions and/or positive requirements as the Court considers appropriate and are intended to provide a speedier process to obtain an order when there is an immediate risk of harm. The purpose of an interim SPO is to protect the victim whilst the main application for a SPO is being determined and is considered to be an exceptional measure where there is a very clear concern about the safety of an individual. An interim order has effect for a fixed period specified in the order and will cease to have effect on determination of the “main” application.
234. Parenting NI wanted to see specific consideration included in the Bill or the guidance when an interim SPO is being imposed to provide for a legal requirement to act in a way that supports the best interests of any children involved in the case which will often mean continued contact with both parties. Parenting NI suggested that, as an interim, consideration could be given to engaging a third party (either statutory such as the police or social services) or a registered third sector organisation to facilitate contact between the child and their parent without necessitating any contact between the victim and potential perpetrator.
235. The Department advised that matters which the court is required to consider when determining contact arrangements fall to the Department of Finance and the legal framework already provides for the welfare of the child to be the paramount consideration. The courts will also already provide for contact to be facilitated through third parties such as contact centres, relatives etc. where it is not possible for parents to be involved in the handover for contact.
236. **The Committee supports the provision of interim SPOs, viewing them as a very helpful tool for the PSNI to use in the event of immediate harm to a victim and providing the time needed to obtain a SPO.**
237. **The Committee agreed that it is content with Clause 11 as drafted.**

## **Clause 12 – Content of, and Procedure for, Orders**

238. Clause 12 sets out what details must be specified within the terms of a stalking protection order or an interim stalking protection order and some procedural details on the operation of the Bill in a court of summary jurisdiction.
239. Concerns were raised by the Women's Policy Group NI, the Women's Aid Federation and HRe NI/Cara Friend regarding the criminalisation of under 18 year olds. They stated that anyone under 18 should be dealt with in a Youth Court setting and do not believe that a SPO is appropriate for a child. In their view giving anyone under 16 years old a SPO risks criminalising children unnecessarily.
240. The Department responded advising that Clause 12(4) to (7) provides that where a person is under 18 when an application for an order is made, or when an application is made to vary, renew or discharge an order, the application is to be heard in a youth court.
241. **The Committee agreed that it is content with Clause 12 as drafted.**

### **Clause 13 – Offence of Breaching Order**

242. Clause 13 provides that it is a criminal offence to breach the terms of a SPO or an interim SPO without reasonable excuse. It will be for a court to decide what constitutes a reasonable excuse in a particular case.
243. The key issues raised in respect of Clause 13 were the need to take reported breaches of an order seriously, the importance of communication with victims and the maximum sentence that will apply on summary conviction.
244. Victim Support NI stated that an obligation should be put in place in cases where a breach has been reported to contact victims in a timely fashion to inform them of the outcome of the proceedings or decisions on bail.
245. NIWEP believes it is vital that victims are taken seriously and supported when reporting a breach. In their view, failure to do so not only leaves the victim at risk of harm from the perpetrator but also creates severe additional harm in

reducing the victim's trust in the ability and willingness of the justice system to support and protect them.

246. A number of organisations including HERe NI/Cara Friend, Women's Aid Federation and the Women's Policy Group NI stated that issues in relation to current breaches of non-molestation orders not being taken seriously by the police when reported need to be addressed before implementation of a new order to make sure breaches of those orders are dealt with seriously.
247. They also believe that it should be a breach of a SPO for the recipient of the order not to comply with any of the requirements of the order or to continue to behave in a manner that had been prohibited in an order. This might, for example, include behaviour that would not otherwise be an offence but that was causing an individual to suffer fear and alarm.
248. In the view of these organisations, the breach of a SPO should be a criminal offence. In addition, breach of an SPO should be considered an aggravation of any offence perpetrated while the SPO is in place e.g. stalking, threatening behaviour putting someone in fear etc.
249. In response to the concerns raised, the Department advised that the statutory guidance on SPOs will provide detailed information about the procedure and use of these orders as well as providing a practical toolkit for police to use and reference. The Stalking Implementation Oversight Group, which includes key stakeholders and criminal justice partners, will be involved in the production of the statutory guidance.
250. The Women's Aid Federation, HERe NI/Cara Friend and the Women's Policy Group pointed out that the maximum sentence on summary conviction in England and Wales for a breach of a SPO is 12 months. They contended that the maximum sentence provided for in Clause 13 should be raised to 12 months to prevent disparity between different regions.
251. In its written response, the Department did not comment on the suggested increase in the maximum sentence for a breach of an order.

## **Committee Consideration of Clause 13**

252. The Committee raised the disparity in the maximum sentence on summary conviction with officials and they advised that the legislation in England and Wales which provides for a 12-month maximum sentence has not yet been commenced and there is no indication that it will be commenced in the near future. The maximum sentence available in that jurisdiction is therefore 6 months. The officials also pointed out that, in Northern Ireland, a person can apply for a hearing with a jury rather than a summary judgement if a sentence of more than six months is available on summary conviction. This could introduce an element of additional time and potential delay, when the intention of a summary judgement is that it is quick and concise and the judge is able to make the determination.
253. Clarification was also sought regarding what would be deemed a reasonable excuse to breach an order and officials outlined that there could be a circumstance where, despite their best efforts, the person finds themselves potentially in breach and provided an example to illustrate this.
254. **The Committee welcomes the stand-alone offence of breaching a SPO or interim SPO which can attract significant penalties and notes that the maximum sentence provided is in line with that currently available in England and Wales. This offence provides the tools for the courts to act seriously when SPOs or interim SPOs are not adhered to and should provide some reassurance to victims of stalking.**
255. **The Committee agreed that it is content with Clause 13 as drafted.**

## **Clause 14 – Notification Requirements**

256. Clause 14 requires a defendant subject to a SPO or interim SPO to provide certain personal details to the police before the end of three days beginning with the date the order comes into force. Subsections (2) to (4) set out what personal information the defendant is required to provide to the police and what to do if any of this personal information changes.

257. HERe NI/Cara Friend, the Women's Policy Group NI and the Women's Aid Federation suggested a number of additional notification requirements to those proposed including the perpetrator's previous address if at their current property for less than 3 months; whether they are currently in a relationship and with whom; if there are children living in the same property; and whether there are any addiction issues or any other issues such as poor mental health. They believe that the provision of more information will ensure a stalker could not continue to stalk a victim by using a different name or by changing their address so that they could not be found by the police.
258. In their evidence, the PSNI noted that the legislation does include what home address means but it does not go as far as other guidance in respect of temporary accommodation/stays away from their permanent residence. They advised that clarification is required on whether a subject would have to notify if they are staying in a holiday property somewhere else within the UK, if they leave the UK or if they stay in a hotel overnight. Clarification on whether they would be subject to management in the same way as a PPANI offender or, indeed, if a SPO is expected to bring an individual into PPANI and, if so at what point, is also required.
259. The PSNI also questioned whether there will be a positive obligation on police to visit, monitor or manage an individual subject to a full or interim order in the same way for a violent offender or registered sex offender. The PSNI would be supportive in principle if there was a positive provision within an order similar to that within a SOPO, which would allow officers to examine devices to ensure compliance with the order and point out that this could be key, given that some of the offending behaviours which amount to stalking are done without the knowledge of the victim. They highlighted, however, that such an obligation will have a significant impact on resources and budgets for the PSNI and other PPANI agencies. The Manual of Practice for PPANI would also need to be revised.
260. In its response, the Department advised that it had noted the questions regarding the address notification requirements and these will be addressed with police partners to ensure effective operationalisation of the SPOs. The Department also advised that it had commenced collaboration and discussion

with colleagues in Public Protection Branch regarding the stalking offence and subsequent SPOs coming within PPANI and that this will be developed further within the remit of the Stalking Implementation Oversight Group.

261. **The Committee noted the position as outlined by the Department and agreed that it is content with Clause 14 as drafted.**

## **Clause 15 – Method of Notification and Related Matters**

262. Clause 15 sets out where and how a defendant must notify the police; how notification must be acknowledged, and the police powers to verify the identity of the defendant when they attend at a police station to notify.
263. The PSNI sought clarification of how the notification should take place and whether there is a requirement for this to be in a proscribed police station or whether this can be undertaken via for example video conferencing.
264. The Department advised that it is working closely with operational partners on the use of SPOs and is drawing on the experience of forces in England and Wales before they are introduced in Northern Ireland. Officials also informed the Committee that an implementation group will be looking at the practical workings of the legislation and there are other regulations in place that cover the same issue.
265. Women's Aid Federation, the Women's Policy Group NI and HERe NI/Cara Friend wanted the amendments made through Section 10 of the Stalking Protection Act 2019 used in relation to notification requirements as they viewed them as more comprehensive and Women's Aid provided the text of Section 10 as part of their written submission to illustrate this.
266. The Department confirmed that both the Office of Legislative Counsel and the Departmental Solicitor's Office agreed that this Clause was drafted in line with other legislation with notification requirements therefore it is not tied to only those with a home address in Northern Ireland.
267. **The Committee agreed that it is content with Clause 15 as drafted.**



## **Clause 16 – Offences Relating to Notification**

268. Clause 16 provides that it is a criminal offence to fail to comply with the notification requirements without reasonable excuse or knowingly to provide the police with false information. It will be for a court to decide what constitutes a reasonable excuse in a particular case. Subsection (2) provides the penalty for the offence relating to notification requirements.
269. The Women's Aid Federation, HERe NI/Cara Friend and the Women's Policy Group raised the same issue regarding the maximum sentence available as was covered in relation to Clause 13. In response, the Department advised that it considers the penalty for failure to comply with notification requirements as currently drafted to be consistent and proportionate.
270. **The Committee agreed that it is content with Clause 16 as drafted.**

## **Clause 17 – Guidance**

271. Clause 17 requires the Department of Justice to issue and publish guidance to the Chief Constable about the exercise of their functions under the second part of this Bill. It is envisaged that the statutory guidance will provide information about the procedure for applying for a Stalking Protection Order as well as providing a practical toolkit for police to use when making applications.
272. A number of organisations commented on the need for guidance to aid the implementation of the legislation, not just in respect of SPOs and interim SPOs but in relation to the new offence and assurances were sought that voluntary sector organisations would be involved in the preparation of the guidance along with statutory partners.
273. The Women's Aid Federation, NIWEP, HERe NI/Cara Friend and the Women's Policy Group NI all stated that guidance should be established by the Department with regard to this Bill and it should be developed in conjunction

with voluntary and statutory partners. They sought assurances from the Department that they would be involved in this process.

274. NIWEP was of the view that guidance will be vital in ensuring that all justice agencies and professionals have a clear understanding of the legislation and capacity and skills are developed across the system and these are applied effectively and consistently.
275. The PSNI indicated that detailed guidance from the Department, similar to that provided in relation to the Domestic Abuse Act, will be essential to the successful “operationalisation” of the legislation.
276. The Law Society NI was of the view that guidance will be key to the effectiveness of SPOs together with a clear understanding of the difference between SPOs and other existing protective orders. It stated that the guidance needs to be clear and unambiguous and supporting documentation such as a practical toolkit for the PSNI should assist with the introduction of this new power.
277. The Department confirmed that this clause required it to issue and publish guidance to the Chief Constable about the exercise of his functions under the second part of this Bill i.e. SPOs and interim SPOs. It envisaged that the statutory guidance would provide information about the procedure for applying for a SPO as well as providing a practical toolkit for police to use and reference.

## **Committee Consideration of Clause 17**

278. The Committee noted that Clause 17 currently only requires the Department to issue and publish guidance to the Chief Constable in relation to SPOs and interim SPOs and questioned whether the Department intended to also cover the new offence in the guidance and provide it for a wider audience.
279. In oral evidence the departmental officials informed the Committee that the intention was to publish an annex to the guidance that would assist in understanding the legislation and how it might apply. The Department subsequently confirmed in writing that the guidance is directed to the Chief Constable as he is responsible for seeking and operating SPOs and interim

SPOs. The intention is however that it will also include a specific section on the stalking offence and it will be published and available to all the criminal justice agencies and non-government and voluntary organisations for assistance and guidance.

280. The Committee believes in the importance of guidance being available in relation to this new offence, similar to that provided for in the Domestic Abuse and Civil Proceedings Act which requires the Department to issue guidance in respect of the domestic abuse offence or any other matters of criminal law and procedure that relate to domestic abuse. The Committee agreed that it wants to see Clause 17 widened to build on the obligation to issue guidance about the exercise of the Chief Constable's functions relating to SPOs or interim SPOs and reflect the intention of the Department to cover the stalking offence as well. The Committee sought confirmation regarding whether the Minister was content to bring forward an amendment to cover this and also decided to seek advice on a possible amendment of its own.
281. The Department, in response, stated that officials had already committed to complying with the Committee's request regarding the content of the guidance to include the operation of the stalking offence both in writing and during oral evidence and advised that no further purpose would be served by amending Clause 17 as suggested. The Minister was however happy to make a Ministerial commitment that the Department will include the exercise of the Chief Constable's functions under the provisions of the Act relating to the stalking offence as part of the required guidance.
282. **The Committee considers the provision of guidance on the new stalking offence as well as the SPOs and interim SPOs to be essential for the consistent and robust implementation of this legislation. There has been a lack of knowledge and understanding of stalking behaviour amongst the criminal justice agencies and the new offence is a course of conduct offence similar to the new domestic abuse offence which is still a relatively new concept. Given that the Department intends to cover the stalking offence in the guidance the Committee is of the view that it is more appropriate to amend Clause 17 to reflect this and provide certainty, clarity and transparency rather than leave it as drafted which suggests the**

**guidance will only cover SPOs and interim SPOs. The Committee therefore agreed to bring forward an amendment to build on the current provision and require the Department to cover the effect of this Act and such other matters as the Department considers appropriate as to criminal law or procedure relating to stalking in Northern Ireland in the guidance as follows:**

Page 12, Line 1, before Clause 17 insert —

*“Guidance about stalking*

*16A.— (1) The Department of Justice must issue guidance about —*

*(a) the effect of this Act, and*

*(b) such other matters as the Department considers appropriate as to criminal law or procedure relating to stalking in Northern Ireland.*

*(2) A person exercising public functions to whom guidance issued under this section relates must have regard to it in the exercise of those functions.*

*(3) The Department of Justice must —*

*(a) keep any guidance issued under this section under review, and*

*(b) revise any guidance issued under this section if the Department considers revision to be necessary in light of review.*

*(4) The Department of Justice must publish any guidance issued or revised under this section.*

*(5) Nothing in this section permits the Department of Justice to issue guidance to a court or tribunal.”*

283. The Committee noted that the Department had stated in its Delegated Powers Memorandum on the Bill that the guidance would be laid in the Northern Ireland Assembly for information purposes and supported the proposal by the Assembly Examiner of Statutory Rules, in her advice on the delegated powers

within the Bill, that a requirement to lay the guidance before the Assembly should be included in this Clause.

284. The Committee wrote seeking the views of the Department on this proposal and the Department responded indicating that having considered the matter further it was now proposing to resile from the commitment to lay the guidance in the Assembly for information purposes as there was no legal requirement for it to do so. The Committee requested clarification of the Department's decision not to accept the proposal that there should be a requirement to lay the guidance in the Assembly and its decision to also resile from its original commitment to lay the guidance in the Assembly. The Committee also advised that if the Department did not wish to bring forward an amendment to Clause 17 to implement the proposal then it would consider doing so.
285. The Department subsequently advised that its original intention to lay the guidance in the Assembly for information purposes followed the format of the Domestic Abuse and Civil Proceedings Act and aimed to maintain a consistent approach however it was content to bring forward an amendment to Clause 17 to require the guidance to be laid before the Assembly.
286. **The Committee considered the text of the proposed amendment to require the guidance to be laid before the Assembly at its meeting on 11 November 2021 and agreed that it was content to support it.**
287. **The Committee agreed that it is content with Clause 17 subject to the amendment proposed by the Minister of Justice to require the guidance to be laid in the Assembly and subject to the Committee's own amendment to require the Department to cover the effect of this Act and such other matters as the Department considers appropriate as to criminal law or procedure relating to stalking in Northern Ireland in the guidance.**

## INTERPRETATION, COMMENCEMENT AND SHORT TITLE

### Clause 18 – Interpretation

288. Clause 18 defines various words and phrases used within the Bill.

289. **The Committee agreed that it is content with Clause 18 as drafted.**

### Clause 19 – Commencement

290. Clause 19 sets out when the provisions will come into force and gives the Department of Justice powers to make such transitional, transitory or saving provisions as the Department considers appropriate when bringing the provisions into operation. Clauses 1 to 5 and Clauses 18 to 20 will come into operation on the day after the day on which this Act receives Royal Assent. The other Clauses will come into operation on such day or days as set out by order made by the Department.

291. The Department provided the text of an amendment to this Clause to reflect the new provisions to be inserted in the Bill.

292. **The Committee agreed that it is content with Clause 19 subject to the minor amendment proposed by the Minister of Justice.**

### Clause 20 – Short Title

293. This Clause gives the short title of the Act.

294. **The Committee agreed that it is content with Clause 20 as drafted.**

## Implementation of the Legislation

295. The importance of how the legislation will be implemented including the need to ensure a comprehensive, consistent and informed approach from the criminal justice agencies was a consistent theme in the evidence received. This was supported by the views and comments of the representatives from the Suzy Lamplugh Trust, the Multi-Agency Stalking Project in Hampshire and Ann Moulds of Action Against Stalking in Scotland who shared their experiences of how similar stalking legislation is operating in England and Wales.
296. START 360 highlighted that the effectiveness of this legislation will depend on how well it is implemented by the authorities and Victim Support NI stated “this is not just a new law; like the Domestic Abuse and Civil Proceedings Act, it is a new way of doing things that will require a new mind set and new approach from our criminal justice agencies. It is just not reasonable to expect that such a cultural change will happen of its own accord. Agencies such as police and prosecutors need to be given the resources, training and tools to meet the challenge of tackling stalking.” These views are echoed by many other organisations and individuals including the NIHRC who recommended that the policies developed in line with any stalking legislation focus on effective implementation and include action plans and monitoring mechanisms.
297. The Committee agrees that for this legislation to be effective getting the implementation right in terms of training, data collection and monitoring, reporting, resourcing and raising awareness is essential to ensure that better protection and criminal justice outcomes are achieved for victims of stalking.

## Data Collection

298. The importance of the availability of detailed and robust data on stalking behaviour and the implementation of the legislation was highlighted by a number of organisations.
299. The NIHRC is concerned that currently very little data on stalking exists in Northern Ireland. The Commission recommends that the Department works with the relevant public authorities and civil society organisations to systematically

collect and publish data on stalking that is disaggregated by sex, gender, ethnicity, disability and age. It should also record the journey of stalking investigations through the criminal justice system including the number of initial reports, number of referrals to the PPS, how many reach different stages of the court process, how many result in prosecutions, what is the resulting remedy and how many repeat offences occur.

300. Victim Support NI recommends establishing an obligation for agencies to collect data on stalking incidents and crimes reported, with clear instructions that any stalking behaviours by ex-partners should be recorded as stalking as opposed to being recorded more generically under domestic abuse. It stated that it may also be valuable to differentiate between stranger, acquaintance and ex-partner stalking within the figures to monitor the prevalence of the different types of stalking and the effectiveness of the law with regard to its applicability to each type. Victim Support NI believes that better data will help improve, tailor and evolve the response to stalking.
301. NIWEP believes robust, high quality data is essential and should include stalking reports made to the PSNI along with monitoring the length of processes and the effectiveness of case handling procedures and protocols. La Dolce Vita Project also supports the recording of statistical data in relation to stalking.
302. The Women's Policy Group NI, HERe NI/Cara Friend and NIWEP recommended that all section 75 groups should be monitored inclusive of sexual orientation and gender identity.
303. The Suzy Lamplugh Trust recommends that monitoring takes place of the number of interim SPOs, those that become full SPOs and those where a subsequent stalking charge is made and that the number of non-molestation orders are recorded to evaluate the impact of SPOs.
304. The Department advised the Committee that the PSNI, the PPS and the NI Courts and Tribunals Service (NICTS) already record statistical data on offences, prosecutions, etc. and the type of data collected on stalking incidents and crimes will be a matter for the PSNI. The Department also indicated that it will carry out an evaluation of the new stalking legislation post implementation.



305. The Committee discussed the need to collect specific data on the new stalking offence and SPOs and interim SPOs with departmental officials at the meetings on 14 October and 4 November 2021. The officials outlined that, as part of the implementation process, new data sets would be created both in relation to the new offence and for SPOs and interim SPOs and there will be a database for monitoring purposes. In their view the issue, along with other implementation issues, will be worked through over the coming months and there was no necessity to include a specific reference to this in the Bill.
306. When questioned on what consideration, if any, the Department had given to collecting data reflecting section 75, officials advised that consideration is being given more generally on obtaining data that is sensitive to the section 75 groupings however it will be some time before a body of data will be built up on the stalking legislation. They also highlighted that this could be done administratively and did not need to be reflected in the legislation.
307. The Committee is of the view that the availability of robust data to enable the effectiveness of this legislation to be assessed is essential. The data needs to be detailed and consistent across the criminal justice system to enable analysis to take place at each stage of the process. The Committee therefore agreed that it wished to see an amendment to the Bill to provide for the Department to issue guidance on the type of information required and sought confirmation regarding whether the Minister was content to bring forward an amendment to cover this.
308. The Department advised that it did not consider the addition of a provision to cover data collection necessary or an appropriate inclusion on the face of the Bill and expressed the view that provisions should only be included in primary legislation where there is no other means by which they can be facilitated. It referred to the assurance provided by officials during the meeting of the Committee on 14 October that data collection will automatically commence by the PSNI, PPS and Northern Ireland Courts and Tribunal Service once the stalking offence becomes law and outlined that the new offence will come within Causeway which supports electronic information-sharing between the five main criminal justice organisations and generates the NI Criminal History database. In its view the proposed provision would do no more than place in statute that

which the Department and its agencies are already committed to undertake administratively.

309. The Department did however indicate that the Minister appreciated the Committee's desire to include the provision in the Bill and therefore had exceptionally agreed to bring it forward as a departmental amendment.
310. The Committee considered the text of the departmental amendment to provide for guidance on data collection at its meeting on 25 November 2021 and agreed that it is content to support the amendment as set out below:

Minister of Justice Amendment

After Clause 17 insert -

*“Operational matters*

*Guidance on data collection*

*17A.— (1) The Department —*

*(a) may issue guidance to the listed bodies, or any additional bodies the Department considers appropriate, about the sort of information it seeks to obtain from them for the purpose of the assessment by it of the operation of this Act, and*

*(b) must have regard to relevant information it obtains from the listed bodies, or from any additional bodies to whom such guidance is issued, in relation to the operation of this Act when determining the steps (if any) that could be taken by it for the purpose of ensuring the effectiveness of the operation of this Act.*

*(2) The listed bodies are —*

*(a) the Police Service of Northern Ireland, and*

*(b) the Public Prosecution Service for Northern Ireland.”*

## Reporting

311. To provide for the monitoring and assessment of the implementation of the legislation and its effectiveness the Committee considered bringing forward an amendment to the Bill to place a requirement on the Department of Justice to report on the operation of the new offence and on SPOs and interim SPOs, similar to the requirement provided for in the Domestic Abuse and Civil Proceedings Act.
312. The Committee discussed the proposal with departmental officials who advised that the implementation of the legislation will be reviewed periodically and provided an assurance that they would report to the Committee regularly. While they appreciated it was reassuring to have such things as reporting requirements in the Bill they did not believe it necessary.
313. The Committee remained of the view that an amendment to the Bill to place a requirement on the Department to report on the operation of the legislation was appropriate and would provide for transparency and accountability. The Committee also agreed that the reporting requirement should cover specific information on whether the offence took place in person or on-line and also detail in relation to SPOs and interim SPOs.
314. The Committee again sought confirmation of whether the Minister was content to bring forward an amendment to cover this. In response the Department reminded the Committee that it would be keeping the roll-out of the legislation under review and officials had given an assurance that the Department will report to the Committee at regular intervals on the operation of the provisions in the Bill and it will also be scrutinised by the Criminal Justice Inspection Northern Ireland (CJINI) at a suitable point. The Department did not therefore consider the addition of a provision to cover a reporting requirement necessary but the Minister had exceptionally agreed to bring it forward as a departmental amendment.
315. The Committee considered the text of the departmental amendment to report on the operation of the Act at its meeting on 25 November 2021 and sought clarification of whether data capture for the breach offences was covered and

also requested that further detail regarding SPOs and interim SPOs be included. The Department responded confirming that the new clause would capture those who are in breach of an order and that, in its view, the level of detail regarding SPOs and interim SPOs could be facilitated within the current proposed provision under “*any further information the Department considers appropriate*” therefore no changes to the text were required.

316. **The Committee believes that the availability of detailed information on SPOs and interim SPOs is beneficial, particularly given the anecdotal evidence highlighted by the Suzy Lamplugh Trust, and it should be included in the reporting requirement therefore it agreed that it was content to support the departmental amendment but would amend it to provide for a more detailed obligation on data capture of SPOs and interim SPOs as follows:**

Minister of Justice Amendment

After clause 17 insert -

*“Report on the operation of this Act*

*17C.– (1) The Department must prepare a report for each reporting period giving the following information (so far as available to the Department) —*

*(a) the number of stalking incidents reported to the police,*

*(b) the number of stalking protection orders applied for, and the number made,*

*(c) the number of crimes recorded by or on behalf of the police that are classified as an offence under section 1 or 2,*

*(d) the numbers mentioned in paragraphs (a) and (c) broken down by reference to police districts,*

*(e) the number of files submitted by or on behalf of the police to the Public Prosecution Service for Northern Ireland in relation to offences under either or both of sections 1 and 2,*

*(f) the number of cases prosecuted by the Public Prosecution Service for offences under either or both of sections 1 and 2, and —*

*(i) the number of convictions in those cases,*

*(ii) the average length of time in those cases from recording of a crime by or on behalf of the police to disposal of the case at court (ignoring appeal processes), and*

*(iii) the number mentioned in sub-paragraph (i) broken down by reference to whether the conduct or behaviour concerned was engaged in by means of the internet —*

*in a key way, or*

*in some lesser but non-minimal way, or*

*either minimally or not at all,*

*(g) information about the level of compliance with —*

*(i) stalking protection orders and interim stalking protection orders, and*

*(ii) the requirements of sections 14 and 15 (notification by persons subject to orders),*

*(h) information about the level of participation, by persons for whom section 17B requires training to be provided, in the required training provided for them,*

*(i) information about how court business is arranged so as to ensure the efficient disposal of —*

*(i) cases under either or both of sections 1 and 2, and*

*(ii) applications for stalking protection orders and applications for interim stalking protection orders,*

*(j) information about the experience at court of —*

*(i) witnesses (other than the accused) in cases under either or both of sections 1 and 2;*

*(ii) witnesses (other than the person against whom the order is sought) in applications for stalking protection orders and applications for interim stalking protection orders,*

*(k) any views or assessment that the Department considers it appropriate to give in relation to the operation of this Act or its effectiveness,*

*(l) information about any issuing, review or revision of guidance under section 17 or 17A,*

*(m) information about any steps taken by the Department for raising public awareness of the behaviours addressed by this Act (including, in particular, awareness amongst persons targeted, or harmed or otherwise victimised, by the behaviours),*

*(n) information about any activities undertaken by the Department in supporting the operation of this Act, and*

*(o) any further information the Department considers appropriate.*

*(2) In subsection (1)(a) “stalking incident” means an incident (including a course of conduct) which, as reported to the police, indicates either or both of the following —*

*(a) that an offence may have been committed under section 1 or 2;*

*(b) that the Chief Constable may have grounds for applying for a stalking protection order against a person.*

*(3) For the purposes of subsection (1) —*

*(a) the first reporting period —*

*(i) begins at the end of the day on which this Act receives Royal Assent, and*

*(ii) is of such length, not less than 2 years and not more than 3 years, as the Department determines, and*

*(b) each subsequent reporting period is the 3 years beginning with the end of the previous reporting period.*

*(4) The Department must arrange for each report under this section to be published in such manner as the Department considers appropriate.*

*(5) The Department must lay before the Assembly each report under this section.*

*(6) The duty under subsection (1) does not apply to reporting periods ending after such time as the Department may by regulations specify, but a time may not be specified if it is earlier than the end of 10 years beginning with the end of the day on which this Act receives Royal Assent.*

*(7) Regulations under subsection (6) are subject to negative resolution.”*

Committee amendment to the amendment

*(1A) With regard to Stalking Protection Orders under section 7, the report must set out this information —`*

*(a) the number of —*

*(i) applications made for Orders*

*(ii) the number of Orders made*

*(b) the duration of Orders, specifically the number —*

*(i) discharged in less than the initial 2 years,*

*(ii) completing the 2 year period without renewal, and*

*(iii) subject to further order for a period beyond the initial 2 years*

*(c) the number subject to further Order, and*

*(d) information on the number of applications seeking to —*

- (A) vary,
- (B) renew, or
- (C) discharge

an Order.

*(1B) With regard to Interim Stalking Protection Orders under section 11, the report must set out this information —*

*(a) the number of —*

- (i) applications made for Interim Orders*
- (ii) Interim Orders made,*

*(b) the average duration of Interim Orders,*

*(c) the number of —*

- (i) Interim Orders which cease as a result of being replaced by a Stalking Protection Order,*
- (ii) the number subject to further Interim Orders, and*
- (iii) information on the number of applicants seeking to —*

- (A) vary,*
- (B) renew, or*
- (C) discharge*

*an Order.”*

## **Training**

317. A wide range of organisations including the Law Society, La Dolce Vita project, START360, the Belfast Area Domestic & Sexual Violence and Abuse Partnership and the Women’s Policy Group NI highlighted that education and



training of criminal justice agencies and of judges is vital to ensure effective implementation of the legislation and clear understanding of the difference between harassment and stalking as well as recognising the behaviours and dynamics of stalking and how it impacts on victims. The need for the training to also cover SPOs and interim SPOs was also raised. Some organisations wanted the training to be mandatory.

318. Women's Aid stated that training among police, judges, prosecutors and the legal professions is essential and this has been shown to be the case in other jurisdictions where stalking and harassment offences have been put on the statute books.
319. Victim Support NI indicated that the training should impart an understanding of different types of stalking and awareness of scenarios where stalkers enjoy a position of power either over their victim individually or societally where the stalker holds a position of power or standing.
320. The NIHRC in its response to the Department's consultation on the proposals for the legislation, indicated the importance of developing and implementing effective training programmes. It also highlighted that the Attorney General for NI had identified the need for human rights focussed training and the need for co-ordinated multi-agency cooperation to allow comprehensive and appropriate handling in cases of domestic abuse and stalking. The Commission recommends that support staff and all staff and professionals involved in the reporting and criminal justice process are effectively trained and qualified to work with stalking victims and survivors. Training should acknowledge and address the fact that victims of stalking may have limited confidence in enforcement bodies.
321. NIWEP emphasised the importance of capacity building for professionals across the justice system to ensure all stakeholders have the knowledge and skills to deal sensitively and effectively with victims and the expertise to assess evidence of stalking behaviour. A clear understanding of the dynamics of stalking, how it presents and how it impacts on victims is required and victims must feel believed and supported, with access to relevant support throughout proceedings. NIWEP stated that existing organisations in the domestic abuse

sector, including voluntary sector organisations providing support to victims and survivors, would be well placed to either provide capacity building or at least contribute to the development of capacity building programmes and materials.

322. The Scottish charity Action Against Stalking also emphasised the importance of specialised training programmes for police and prosecutors.
323. The Committee also met with an individual to discuss his personal experience in researching the crime of stalking and delivering training to police organisations in England, specifically to call handlers, front line response officers, investigators and supervisors dealing with stalking cases on a daily basis.
324. The Department responded to the views and comments by advising that it does not underestimate the importance and necessity of training for all of its criminal justice partners on the new offence and SPOs. It envisages that the training will include raising awareness of stalking typologies and the insidious nature of stalking and it will be a key work stream within the remit of the Stalking Implementation Oversight Group. It also highlighted that it had previously led on two awareness events with key note speakers from the College of Policing, Aurora New Dawn Advocacy Service, Crown Prosecution Service and a former police officer who trained forces in England and Wales on recognising stalking behaviour and the use of SPOs, who shared their experience, best practice and guidance.
325. The Committee discussed placing a requirement for training on the face of the Bill with officials who advised that work was already on-going in relation to training and commitments had been given in this respect. In their view there was no need for it to be covered in the Bill.
326. **Given the importance of training to the implementation of this legislation, particularly in light of the evidence heard of the current lack of understanding by criminal justice personnel of stalking behaviour and the devastating impact on victims, the Committee agreed that it wished to see an amendment to the Bill to provide for mandatory training and again sought confirmation regarding whether the Minister was content to bring this forward.**

327. The Department responded in similar fashion to this proposal reminding the Committee that planning for training is already underway, it is a priority for both it and the Stalking Implementation Oversight Group and, in its view, the proposed provision would do no more than place in statute that which the Department and its agencies are already committed to undertake administratively. The Minister had however again exceptionally agreed to bring it forward as a departmental amendment.
328. The Committee considered the text of the departmental amendment on training at its meeting on 25 November 2021 and, noting that it did not appear to have any reference to reporting on the training which is an area the Committee wants covered, agreed to ask the Department to include this in its amendment. The Department responded advising that reporting on the level of participation by personnel in training is already covered in its reporting requirement on the operation of the Act at Clause 17C(1)(h) - *“information about the level of participation, by persons for whom section 17B requires training to be provided, in the required training provided for them”* and therefore the proposed addition was not necessary.
329. The Department also indicated that, given the staged implementation timeframes for the offence of stalking and that stalking protection orders will require different training requirements and delivery schedules, the requirements of not less than 2 years and not more than 3 years as currently presented in the text of the reporting amendment provides a more practical timeframe than the one suggested by the Committee that training should be reported before the end of the period of 18 months.
330. **The Committee is of the view that a reporting requirement on the training should be included in the provision and agreed that it was content to support the departmental amendment but would amend it to provide for this as follows:**

Minister of Justice amendment

After clause 17 insert -

*“Training*

*17B.— (1) It is mandatory for each listed authority, and each specified authority, to provide for those of its relevant personnel who have responsibilities for dealing with cases under this Act —*

*(a) such initial training, and*

*(b) such annual or other top-up training,*

*as the authority considers appropriate for the purpose of the effective discharge by those personnel of their respective responsibilities.*

*(2) The Chief Constable is a listed authority, and the Chief Constable’s “relevant personnel” are the personnel of the Police Service of Northern Ireland.*

*(3) The Director of Public Prosecutions for Northern Ireland is a listed authority, and the Director’s “relevant personnel” are the personnel of the Public Prosecution Service for Northern Ireland.*

*(4) The Department is a listed authority, and the Department’s “relevant personnel” are —*

*(a) staff within the Northern Ireland Courts and Tribunal Service, and*

*(b) staff within any additional agency of the Department that has functions in relation to cases under this Act and that the Department selects in connection with this subsection.*

*(5) A “specified authority” is a person that —*

*(a) has functions in relation to cases under this Act, and*

*(b) is specified in connection with this section in regulations made by the Department;*

*and a specified authority’s “relevant personnel” are persons of a description specified in regulations made by the Department.*

*(6) Regulations under subsection (5) are subject to negative resolution.”*

Committee amendment to the amendment

*(5A) The Department of Justice must —*

*(a) publish a statement setting out information held or obtained by the Department about the level of participation by the relevant personnel or (as the case may be) staff in training provided by a body in accordance with this section, and*

*(b) do so —*

*(i) before the end of the period of 3 years beginning with the day on which Sections 1 and 2 come into operation, and*

*(ii) annually thereafter.”*

## **Public Awareness**

331. A number of organisations including the NIHRC, the Belfast Area Domestic & Sexual Violence and Abuse Partnership, NIWEP, the Women’s Policy Group NI and the Probation Board highlighted the need for a public awareness campaign to raise awareness of the new offence and Women’s Aid commented that a new law alone will not improve the lives of stalking victims without a successful public awareness campaign to dispel key myths.
332. The evidence received suggested that the campaign should cover the consequences of committing the offence, be co-designed with relevant stakeholder organisations and be inclusive of LGBTQ+ people. The Committee for Agriculture, Environment and Rural Affairs also advised that consideration should be given to what specific actions may be required to raise awareness in rural areas.
333. The Scottish charity Action Against Stalking stated that the media has a huge role to play in educating the public and it found that the biggest challenge was to get the media to help people understand that crimes of a psychological and abusive nature are every bit as serious as other crimes.

334. The Department has advised the Committee that it intends running an awareness campaign for the new stalking legislation when it becomes law. The content of the advertising campaign has not yet been determined but the Department has noted the comments around the need for the campaign to be inclusive of all sections of society and to provide coverage in rural areas.
335. **The Committee agrees that raising public awareness, knowledge and understanding of the new offence will be very important in ensuring the effectiveness of the legislation and it welcomes the commitment by the Department to undertake an awareness campaign. A requirement for the Department to report on the steps it takes to raise public awareness, and in particular the awareness of victims, of stalking has been included as part of the Department's reporting obligations on the operation of the Act.**

## Resourcing

336. The Permanent Secretary of the Department of Finance noted that the EFM to the Bill indicated that the financial effects arising from the Bill would be considered in a separate business case. The Permanent Secretary advised that any financial effects should however be quantified in the EFM so that the full effects of any proposed legislation are understood.
337. The PSNI outlined that there are cost implications relating to the implementation of the Bill including training and reporting requirements and in relation to applications for and monitoring of compliance with the SPOs. In its oral evidence the PSNI outlined that any new legislation comes with a financial cost and it did not want to be in a position that it was unable to properly use the legislation due to financial constraints. It therefore wished to have a discussion with the Department about the long-term financial arrangements within the context of not just this Bill but previous and expected other pieces of legislation. Victim Support NI endorsed the PSNI's view regarding resources.
338. The Suzy Lamplugh Trust highlighted that there is anecdotal evidence from England and Wales that the financial cost to police forces of applying for an SPO is being used as a reason to defer the responsibility of prevention back to

the victim i.e. they are being encouraged to apply for a non-molestation order rather than the police applying for an SPO.

339. Women's Aid, and the Women's Policy Group NI both emphasised the need for adequate, sustainable funding to ensure full and effective implementation of the legislation.
340. HERe NI/Cara Friend, La Dolce Vita Project and the Suzy Lamplugh Trust also stated that appropriate financial resources are required for support services to victims and survivors and their children and for the criminal justice agencies to implement the legislation. NIWEP also outlined that well-resourced services for victims and survivors, including LGBT+ people and women with no recourse to public funds is required and stated that it is also essential to ensure appropriate resources are available to support preparation of applications for SPOs.
341. Responding to the issues raised the Department stated that the business case for the Bill is in progress and will include the costs for implementation of the legislation. The Department recognises that resources will be required for training and the introduction of SPOs will have some financial effects relating to applications by police to the courts. It is however considered that a significant proportion of costs associated with current related offences of harassment and fear of violence will come within the remit of the new stalking offence once in place.
342. The Committee discussed the issue of resourcing the implementation of the Bill with officials and sought information on what discussions had taken place with the police about potential costs. The officials advised that they were liaising closely with the police and additional work would be undertaken on costings to inform the production of a business case. One of the difficulties of assessing the costs is trying to quantify the volume of stalking that is likely to be captured by the legislation given a lot of the available information is anecdotal and account also needs to be taken that existing costs will hopefully cease or be substituted for more effective action. It was clear that there would be training costs and, in due course, costs to the courts etc. but the Department expected most of these to be covered by existing budgets. The officials committed to work with the

police to identify any additional costs that may arise and identify how they can be met and advised that, if necessary, they would bid for additional resource.

- 343. The Committee appreciates the difficulties in estimating the potential resourcing requirements for the implementation of this legislation in terms of the likely number of cases given the absence of reliable data on stalking in Northern Ireland. However, to assist consideration of this legislation, it would have been helpful to include in the EFM some information on the likely financial implications.**
- 344. The Committee believes that the assessment of implementation costs and the provision of adequate resources to meet any additional demands is key to ensuring that the legislation is effective and delivers for victims of stalking, particularly given the competing budgetary pressures facing all the criminal justice agencies including the PSNI. The process to establish budgets for the 2022 – 25 period will be taking place over the coming months and the Committee will be scrutinising the Department’s draft budget. This will provide an opportunity to establish what resources will be allocated to the implementation of this legislation.**



## **Clause by Clause Consideration of the Bill**

345. Having considered the written and oral evidence received on the Bill, the Committee deliberated on the clauses of the Bill at its meetings on 4, 11, 18 and 25 November 2021 and undertook its formal Clause-by-Clause consideration at its meeting on 30 November 2021 – see Minutes of Proceedings at Appendix 1 and Minutes of Evidence at Appendix 2.
346. One Member, Ms Sinéad Bradley, indicated that she had some reservations about Clause 1 with regard to the descriptors therein.
347. The Committee supported a departmental amendment to Clause 17 to provide that the guidance must be laid in the Assembly and an amendment to make provision for data collection, both of which were requested by the Committee.
348. The Committee also supported departmental amendments – again at the Committee’s request – to make provision for mandatory training and to require the Department to report on the operation of the Act. However, the Committee agreed to amend the Department’s amendments to include a requirement to report on training and to provide for a more detailed obligation on data capture of SPOs and interim SPOs.
349. The Committee supported a departmental amendment to Clause 19 to reflect the new provisions to be inserted in the Bill.
350. Information on the Committee’s deliberations on the individual Clauses in the Bill and additional provisions can be found in the previous sections of this report.

### **Clause 1 – The Offence of Stalking**

351. Agreed: The Committee is content with Clause 1 as drafted.

### **Clause 2 – The Offence of Threatening or Abusive Behaviour**

352. Agreed: The Committee is content with Clause 2 as drafted.

### **Clause 3 – Special Measures Directions**

353. Agreed: The Committee is content with Clause 3 as drafted.

### **Clause 4 – Alternative to conviction of the domestic abuse offence**

354. Agreed: The Committee is content with Clause 4 as drafted.

### **Clause 5 – No right to claim trial by jury**

355. Agreed: The Committee is content with Clause 5 as drafted.

### **Clause 6 – Meaning of act associated with stalking and risk associated with stalking**

356. Agreed: The Committee is content with Clause 6 as drafted.

### **Clause 7 – Applications for orders**

357. Agreed: The Committee is content with Clause 7 as drafted.

### **Clause 8 – Power to make orders**

358. Agreed: The Committee is content with Clause 8 as drafted.

### **Clause 9 – Duration of orders**

359. Agreed: The Committee is content with Clause 9 as drafted.

### **Clause 10 – Variations, discharges and renewals**

360. Agreed: The Committee is content with Clause 10 as drafted.

## **Clause 11 – Interim stalking protection orders**

361. Agreed: The Committee is content with Clause 11 as drafted.

## **Clause 12 - Content of, and procedure for, orders**

362. Agreed: The Committee is content with Clause 12 as drafted.

## **Clause 13 – Offence of breaching order**

363. Agreed: The Committee is content with Clause 13 as drafted.

## **Clause 14 – Notification requirements**

364. Agreed: The Committee is content with Clause 14 as drafted.

## **Clause 15 – Method of notification and related matters**

365. Agreed: The Committee is content with Clause 15 as drafted.

## **Clause 16 – Offences relating to notification**

366. Agreed: The Committee is content with Clause 16 as drafted.

## **New clause 16A - Guidance about stalking**

367. The Committee agreed to insert a new clause to provide that the Department must issue guidance about the effect of this Act and such other matters as the Department considers appropriate as to criminal law or procedure relating to stalking in Northern Ireland:

Page 12, Line 1, before Clause 17 insert —

***“Guidance about stalking***

*16A.— (1) The Department of Justice must issue guidance about —*

*(a) the effect of this Act, and*

*(b) such other matters as the Department considers appropriate as to criminal law or procedure relating to stalking in Northern Ireland.*

*(2) A person exercising public functions to whom guidance issued under this section relates must have regard to it in the exercise of those functions.*

*(3) The Department of Justice must —*

*(a) keep any guidance issued under this section under review, and*

*(b) revise any guidance issued under this section if the Department considers revision to be necessary in light of review.*

*(4) The Department of Justice must publish any guidance issued or revised under this section.*

*(5) Nothing in this section permits the Department of Justice to issue guidance to a court or tribunal.”*

## **Clause 17 – Guidance**

368. Agreed: The Committee is content with Clause 17 subject to the Minister of Justice’s proposed amendment to provide that the guidance must be laid in the Assembly:

Clause 17, Page 12, Line 8

At end insert -

*“(4) The Department must lay before the Assembly any guidance issued or revised under this section.”*

## **New clause 17A - Guidance on data collection**

369. The Minister of Justice proposes to insert a new Clause 17A to provide for Guidance on Data Collection:

After Clause 17 insert -

## **“Operational matters**

### **Guidance on data collection**

17A.— (1) *The Department —*

*(a) may issue guidance to the listed bodies, or any additional bodies the Department considers appropriate, about the sort of information it seeks to obtain from them for the purpose of the assessment by it of the operation of this Act, and*

*(b) must have regard to relevant information it obtains from the listed bodies, or from any additional bodies to whom such guidance is issued, in relation to the operation of this Act when determining the steps (if any) that could be taken by it for the purpose of ensuring the effectiveness of the operation of this Act.*

(2) *The listed bodies are —*

*(a) the Police Service of Northern Ireland, and*

*(b) the Public Prosecution Service for Northern Ireland.”*

370. Agreed: The Committee is content with new Clause 17A.

## **New Clause 17B – Training**

371. The Minister of Justice proposes to insert a new Clause 17B to provide for mandatory training:

After clause 17 insert -

### **“Training**

*17B.— (1) It is mandatory for each listed authority, and each specified authority, to provide for those of its relevant personnel who have responsibilities for dealing with cases under this Act —*

*(a) such initial training, and*

*(b) such annual or other top-up training,*

*as the authority considers appropriate for the purpose of the effective discharge by those personnel of their respective responsibilities.*

*(2) The Chief Constable is a listed authority, and the Chief Constable’s “relevant personnel” are the personnel of the Police Service of Northern Ireland.*

*(3) The Director of Public Prosecutions for Northern Ireland is a listed authority, and the Director’s “relevant personnel” are the personnel of the Public Prosecution Service for Northern Ireland.*

*(4) The Department is a listed authority, and the Department’s “relevant personnel” are —*

*(a) staff within the Northern Ireland Courts and Tribunal Service, and*

*(b) staff within any additional agency of the Department that has functions in relation to cases under this Act and that the Department selects in connection with this subsection.*

*(5) A “specified authority” is a person that —*

*(a) has functions in relation to cases under this Act, and*

*(b) is specified in connection with this section in regulations made by the Department;*

*and a specified authority’s “relevant personnel” are persons of a description specified in regulations made by the Department.*

*(6) Regulations under subsection (5) are subject to negative resolution.”*

372. Agreed: the Committee is content with new Clause 17B subject to the Committee’s proposed amendment to make provision for a requirement to report on the training:

*“As an amendment to an amendment*

*(5A) The Department of Justice must —*

*(a) publish a statement setting out information held or obtained by the Department about the level of participation by the relevant personnel or (as the case may be) staff in training provided by a body in accordance with this section, and*

*(b) do so —*

*(i) before the end of the period of 3 years beginning with the day on which Sections 1 and 2 come into operation, and*

*(ii) annually thereafter.”*

## **New Clause 17C – Report on Operation of the Act**

373. The Minister of Justice proposes to insert a new Clause 17C to report on the operation of the Act:

After clause 17 insert -

### **“Report on the operation of this Act**

*17C.— (1) The Department must prepare a report for each reporting period giving the following information (so far as available to the Department) —*

*(a) the number of stalking incidents reported to the police,*

*(b) the number of stalking protection orders applied for, and the number made,*

*(c) the number of crimes recorded by or on behalf of the police that are classified as an offence under section 1 or 2,*

*(d) the numbers mentioned in paragraphs (a) and (c) broken down by reference to police districts,*

*(e) the number of files submitted by or on behalf of the police to the Public Prosecution Service for Northern Ireland in relation to offences under either or both of sections 1 and 2,*

*(f) the number of cases prosecuted by the Public Prosecution Service for offences under either or both of sections 1 and 2, and —*

*(i) the number of convictions in those cases,*

*(ii) the average length of time in those cases from recording of a crime by or on behalf of the police to disposal of the case at court (ignoring appeal processes), and*

*(iii) the number mentioned in sub-paragraph (i) broken down by reference to whether the conduct or behaviour concerned was engaged in by means of the internet —*

*in a key way, or*

*in some lesser but non-minimal way, or*

*either minimally or not at all,*

*(g) information about the level of compliance with —*

*(i) stalking protection orders and interim stalking protection orders, and*

*(ii) the requirements of sections 14 and 15 (notification by persons subject to orders),*

*(h) information about the level of participation, by persons for whom section 17B requires training to be provided, in the required training provided for them,*

*(i) information about how court business is arranged so as to ensure the efficient disposal of —*

*(i) cases under either or both of sections 1 and 2, and*

*(ii) applications for stalking protection orders and applications for interim stalking protection orders,*

*(j) information about the experience at court of —*



*(i) witnesses (other than the accused) in cases under either or both of sections 1 and 2;*

*(ii) witnesses (other than the person against whom the order is sought) in applications for stalking protection orders and applications for interim stalking protection orders,*

*(k) any views or assessment that the Department considers it appropriate to give in relation to the operation of this Act or its effectiveness,*

*(l) information about any issuing, review or revision of guidance under section 17 or 17A,*

*(m) information about any steps taken by the Department for raising public awareness of the behaviours addressed by this Act (including, in particular, awareness amongst persons targeted, or harmed or otherwise victimised, by the behaviours),*

*(n) information about any activities undertaken by the Department in supporting the operation of this Act, and*

*(o) any further information the Department considers appropriate.*

*(2) In subsection (1)(a) “stalking incident” means an incident (including a course of conduct) which, as reported to the police, indicates either or both of the following —*

*(a) that an offence may have been committed under section 1 or 2;*

*(b) that the Chief Constable may have grounds for applying for a stalking protection order against a person.*

*(3) For the purposes of subsection (1) —*

*(a) the first reporting period —*

*(i) begins at the end of the day on which this Act receives Royal Assent, and*

*(ii) is of such length, not less than 2 years and not more than 3 years, as the Department determines, and*

*(b) each subsequent reporting period is the 3 years beginning with the end of the previous reporting period.*

*(4) The Department must arrange for each report under this section to be published in such manner as the Department considers appropriate.*

*(5) The Department must lay before the Assembly each report under this section.*

*(6) The duty under subsection (1) does not apply to reporting periods ending after such time as the Department may by regulations specify, but a time may not be specified if it is earlier than the end of 10 years beginning with the end of the day on which this Act receives Royal Assent.*

*(7) Regulations under subsection (6) are subject to negative resolution.”*

374. Agreed: the Committee is content with new Clause 17C subject to the Committee’s proposed amendment to provide for a more detailed obligation on data capture of SPOs and interim SPOs:

*“As an amendment to an amendment*

*(1A) With regard to Stalking Protection Orders under section 7, the report must set out this information —`*

*(a) the number of —*

*(i) applications made for Orders*

*(ii) the number of Orders made*

*(b) the duration of Orders, specifically the number —*

*(i) discharged in less than the initial 2 years,*

*(ii) completing the 2 year period without renewal, and*

*(iii) subject to further order for a period beyond the initial 2 years*

*(c) the number subject to further Order, and*

*(d) information on the number of applications seeking to —*

*(A) vary,*

*(B) renew, or*

*(C) discharge*

*an Order.*

*(1B) With regard to Interim Stalking Protection Orders under section 11, the report must set out this information —*

*(a) the number of —*

*(i) applications made for Interim Orders*

*(ii) Interim Orders made,*

*(b) the average duration of Interim Orders,*

*(c) the number of —*

*(i) Interim Orders which cease as a result of being replaced by a Stalking Protection Order,*

*(ii) the number subject to further Interim Orders, and*

*(iii) information on the number of applicants seeking to —*

*(A) vary,*

*(B) renew, or*

*(C) discharge*

*an Order.”*

## **Clause 18 – Interpretation**

375. Agreed: The Committee is content with Clause 18 as drafted.

## **Clause 19 – Commencement**

376. Agreed: The Committee is content with Clause 19 subject to the Minister of Justice's proposed amendment to reflect the new provisions to be inserted:

Clause 19, Page 12, Line 22

*"Leave out first 'section' and insert 'sections 17A to'"*

## **Clause 20 – Short Title**

377. Agreed: The Committee is content with Clause 20 as drafted.

## **Long Title**

378. Agreed: The Committee is content with the Long Title.

## **Other issues Raised in the Evidence Received by the Committee Not Currently Covered in the Bill**

379. A range of other issues not covered in this Bill were also highlighted in the evidence received including:

- The need for research into the prevalence of stalking in NI
- A Stalkers Register
- Wider information and training on stalking
- Services for LGBTQ+ individuals
- Workplace Stalking Policies
- Support throughout the court process
- Gender-aware policy and strategy
- Education
- Offence of Upskirting
- Ratification of the Istanbul Convention
- Implementation of Gillen Review Recommendations
- Violence Against Women and Girls Strategy
- Sentencing Guidelines
- Victim Impact Statements
- Domestic Violence Disclosure Scheme

380. The Committee is already considering some of these issues outside the context of this Bill e.g. the offence of upskirting, implementation of the Gillen Review

recommendations, the provision of relationship and sexuality education and a Violence Against Women and Girls Strategy. Some of the issues also fall within the responsibilities of Ministers other than the Minister of Justice.

381. The Committee sought a written response from the Department on all the issues highlighted and this can be found at Appendix 4.
382. The Committee requested further information on any proposals to establish a Stalking Register for serial perpetrators of stalking and abuse who pose a high risk to victims.
383. The Department advised that there are currently no plans to introduce a register for stalkers in Northern Ireland, as is the position in England and Wales and in Scotland, however it will keep the position under review. It noted that although there were calls for a specific Stalkers Register to be included in the recent Westminster Domestic Abuse Bill the Government instead agreed to improve statutory guidance around the current system for monitoring high-risk criminals to better include serial stalkers and domestic abusers. The multi-agency public protection arrangements (MAPPA) in England and Wales will now include sections on domestic abuse and stalking.
384. The Department outlined that similar public protection arrangements in Northern Ireland enables agencies to work together to enhance public protection and provide effective assessment and management of the risks posed by certain sexual and violent individuals. The Department advised that it has commenced collaboration and discussion with colleagues in Public Protection Branch regarding the stalking offence and SPOs coming within PPANI. This work stream is being developed further within the remit of the Stalking Implementation Oversight Group and will amend the guidance in Article 50 of the Criminal Justice (NI) Order 2008 which governs PPANI.
385. The Department indicated that it is also content that where possible victims raise concerns about stalking behaviour with the PSNI, its access to the Criminal Record's Viewer will ensure that links to any stalking convictions will be immediately picked up. In addition, the PSNI is also setting in place arrangements to ensure that records of SPOs or interim SPOs will be similarly available to investigating officers and this will be kept under continual review.

**386. The Committee is content with the plans to include stalking within the public protection arrangements.**

## **Links to Appendices**

### **Appendix 1: Minutes of Proceedings**

[View Minutes of Proceedings of Committee meetings related to the report](#)

### **Appendix 2: Minutes of Evidence**

[View Minutes of Evidence from evidence sessions related to the report](#)

### **Appendix 3: Written Submissions**

[View written submissions received in relation to the report](#)

### **Appendix 4: Memoranda and Papers from the Department of Justice**

[View Memoranda and Papers supplied to the Committee by the Department](#)

### **Appendix 5: Notes of Informal Meetings**

[View the Notes of Informal Meetings](#)

### **Appendix 6: Research Paper**

[View Research Papers produced by the Assembly's Research and Information Service \(RaISe\) in relation to the report](#)



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