

PROTECTION FROM STALKING BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial memorandum has been prepared by the Department of Justice in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The Memorandum needs to be read in conjunction with the Bill. It does not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

2. In 2016, following the reporting of a number of high profile cases of stalking in the media, the then Minister of Justice commissioned a review of the current law relating to stalking in Northern Ireland. The Northern Ireland Assembly subsequently debated a motion on stalking, in September 2016, and shortly thereafter the Committee for Justice initiated its own review of the law to determine whether specific stalking offences should be created.

3. The Department of Justice supported the Committee's work through the provision of advice and research and by engaging with policy officials in other jurisdictions. The Committee was due to conclude its review in April 2017 and publish its findings. However, with the Assembly in suspension, its review was not completed. The Department's review team built on the initial work of the Justice Committee and went on to review the existing legislative framework; engage with other jurisdictions on their stalking policies and practices; and develop proposals, drawing on the consultation responses submitted to the Committee for Justice.

4. A Stalking Reference Group of key stakeholders was established and contributed to the review by considering the types of stalking behaviours being displayed and their impact on victims; highlighting the experience of victims under the current law, including how cases were handled by the criminal justice system, and suggesting where improvements could be made; identifying key aspects of the law that may need to be reviewed or changed; and ensuring that a broad spectrum of policy options were identified and considered.

CONSULTATION

5. In late November 2018, the Department of Justice launched a public consultation '*Stalking – A Serious Concern, A Consultation on the Creation of a New Offence of Stalking in Northern Ireland*' via press release. A link to the consultation on Citizen Space was distributed to key stakeholders and a media strategy promoted public awareness of the

consultation and ways to respond. The consultation ran for 12 weeks and ended on 21 February 2019. Over the period 85 responses were received.

6. Two public and stakeholder engagement events were planned, to give people the opportunity to share their views on the consultation. One event was held in Girdwood Community Hub, Belfast but an Omagh event was cancelled due to low uptake.

7. The majority of respondents (93%) agreed that the current law (The Protection from Harassment (NI) Order 1997) was underused for the purpose for which it was intended and that it failed to sufficiently reflect the seriousness of stalking as a threat to the life and liberty of its victims. Many respondents felt that there was a lack of understanding of the complexities of stalking within the criminal justice system which allowed the behaviour to escalate.

8. Respondents who had been victims of stalking had varying experiences when reporting the incident to police. Some respondents said their complaints had not been taken seriously and police didn't understand the difference between stalking and harassment behaviours; the impact of stalking on the victim; the fear that victims felt; and the potential risks posed to victims by their stalker. Stalking behaviour could also be viewed wrongly as benign or 'a nice gesture' when in fact the purpose was to instil fear and submissiveness in the victim.

9. Respondents agreed that creating a specific offence of stalking would be a positive step towards ensuring that stalking behaviours are not overlooked or treated less seriously. Respondents considered that having a specific offence in place would send a clear message that stalking in all its forms will not be tolerated in society.

10. The report on the summary of responses can be accessed through the Department of Justice website at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/stalking-consultation-report-responses.pdf>

OPTIONS CONSIDERED

11. In exploring potential options officials have conducted benchmarking with other jurisdictions, in particular England, Wales and Scotland. The stalking offence was not in place in the Republic of Ireland during policy development although officials did meet to learn of their procedures for dealing with stalking.

12. There were 2 options considered, following the public consultation, on creating a specific stalking offence:

- Option 1: Status quo, this would involve making no changes to the legislative framework that is already in place.
- Option 2: Creating a new offence of stalking and introducing provision for Stalking Protection Orders.

- Option 1 does not recognise the need to change the legislative framework to reflect the experience of victims nor identify the types of behaviour associated with stalking.
- Option 2 recognises victims' experience and the need for a specific offence of stalking which will include a definition of conduct associated with stalking. It will also provide for special measures to reduce the potential for an individual to be further victimised during criminal proceedings. In addition, it will ensure compliance with the Istanbul Convention which requires extra-territorial jurisdiction (ETJ) to be extended to the stalking offence. The introduction of Stalking Protection Orders will also provide early intervention and protection for victims.

OVERVIEW

13. The Bill contains 20 clauses and is divided into 3 parts. First part of the Bill deals with the offence of stalking, alternative offence of threatening and abusive behaviour and special measures. Second part deals with the introduction of Stalking Protection Orders. Third part deals with interpretation, commencement and short title of the Bill.

First part – Offences

14. This gives effect to the intention to improve the operation of the justice system by creating a specific offence of stalking that recognises the experience of victims and the behaviour associated with stalking. The Bill will recognise in law that stalking is often a course of behaviour which causes fear, alarm or substantial distress to the victim and includes conduct on two or more occasions.

15. The Bill also includes the offence of threatening or abusive behaviour that can be made out after a single incident or a course of conduct. The offence can also be used as an alternative conviction when the facts do not amount to the offence of stalking in proceedings. The Bill will also provide that all victims of stalking will have automatic eligibility for assistance (such as the use of live links or screens at court) with giving evidence in proceedings.

Second part – Stalking Protection Orders

16. The Bill will introduce provision for Stalking Protection Orders to provide protection to a person at risk of stalking. They will enable early police intervention pre-conviction to address stalking behaviours before they become entrenched or escalate in severity and to protect victims from more serious harm. Stalking Protection Orders can equally be made post-conviction to help to prevent further stalking.

17. The police will be able to apply to the court for a Stalking Protection Order if it appears that a person has carried out acts associated with stalking; poses a risk associated with stalking to another person and there is reasonable cause to believe the Stalking Protection Order is necessary to protect another person from such risk.

COMMENTARY ON CLAUSES

Clauses 1 to 5 - Offences

Clause 1 - Offence of stalking

Subsection (1) creates the offence of stalking where a person (A) engages in a course of conduct that causes another person (B) to suffer fear, alarm or substantial distress or is such that a reasonable person, or a reasonable person who has any particular knowledge of B that A has, would consider to be likely to cause them to suffer fear, alarm or substantial distress.

Subsection (2) provides that the offence is subject to at least one of the two further conditions being met. That (i) A either intended the conduct to cause fear, alarm or substantial distress, or (ii) ought in the circumstances to have known that the conduct would have that effect.

Subsection (3) provides that a course of conduct can constitute the offence of stalking if it consists of or includes conduct occurring outside the United Kingdom. The course of conduct could constitute the stalking offence as if it occurred in Northern Ireland and the accused would need to be a UK national or habitually resident in Northern Ireland.

Subsection (4) defines the meaning of conduct as:

- following B or any other person,
- contacting, or attempting to contact, B or any other person by any means,
- publishing any statement or other material relating or purporting to relate to B or to any other person, or purporting to originate from B or from any other person,
- monitoring the use by B or by any other person of the internet, email or
- any other form of electronic communication,
- entering any premises,
- loitering in any place (whether public or private),
- interfering with any property in the possession of B or of any other person,
- giving anything to B or to any other person or leaving anything where it may be found by, given to or brought to the attention of B or any other person,
- watching or spying on B or any other person, or
- acting in any other way that a reasonable person, or a reasonable person who has any particular knowledge of B that A has, would expect would cause B to suffer fear, alarm or substantial distress;

A “course of conduct” is defined as involving conduct on two or more occasions; and “substantial distress” means distress that has a substantial adverse effect on B’s day to day activities.

Subsection (5) provides for a defence for a person charged with the stalking offence.

Subsection (6) provides the penalty for the offence of stalking. The maximum penalty on summary conviction (heard in a magistrates’ court) is 12 months imprisonment or a fine up to

the statutory maximum (that is £5,000) or both. The maximum penalty on conviction on indictment (heard in a crown court) is 10 years imprisonment or a fine, or both.

Subsection (7) provides an alternative conviction of threatening or abusive behaviour where, when the facts do not amount to the offence of stalking in proceedings, a person may be convicted of the alternative offence that can be made out after a single incident or a course of conduct.

Clause 2 - Offence of threatening or abusive behaviour

Subsection (1) creates the offence of threatening or abusive behaviour where a person (A) behaves in a threatening or abusive manner and the behaviour would be likely to cause a reasonable person to suffer fear and alarm; and (A) intends by the behaviour to cause fear and alarm or is reckless as to whether the behaviour causes fear or alarm.

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 behaviour being of any kind including, in particular, things said or otherwise communicated as well as things done. Behaviour can consist of a single act or omission) or a course of conduct (two or more occasions).

Subsection (4) provides the penalty for the offence of threatening or abusive behaviour. The maximum penalty on summary conviction (heard in a magistrates' court) is 12 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both. The maximum penalty on conviction on indictment (heard in a crown court) is 5 years imprisonment or a fine, or both.

Clause 3 - Special measures directions

Subsection (2) provides 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) with giving evidence in proceedings.

Clause 4 - Alternative to conviction of the domestic abuse offence

This clause 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.

Clause 5 - No right to claim trial by jury

This clause amends Article 29(1) of the Magistrate's 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.

Clauses 6 to 17 – Stalking Protection Orders

Clause 6 - Meaning of act associated with stalking and risk associated with stalking

This clause gives a definition of the acts and risk associated with stalking.

Clause 7 - Applications for orders

This clause 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.

Subsection (1) sets out what a stalking protection order is: a preventative order which can impose both prohibitions and requirements on the perpetrator as are necessary for the purpose of preventing them from carrying out acts associated with stalking.

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 frequently visits;
- contacting the victim by any means, including via telephone, post, email, SMS text message or social media;
- physically approaching the victim, at all or within a specified distance.

This is not an exhaustive list.

An order can also require the defendant to do something, as far as is necessary, to protect the other person from risk of stalking. Positive requirements could include, for example, requiring the defendant to:

- attend a perpetrator intervention programme;
- attend a mental health assessment.

This is not an exhaustive list.

An order may be made on application to a magistrates' court by the Chief Constable.

To make an application, the Chief Constable 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 the order is necessary in order to protect the other person from that risk.

Subsection (3) sets out that the Chief Constable may make an application only in respect of someone who resides in Northern Ireland or who they believe is in or is intending to come to Northern Ireland.

Subsection (4) provides that the behaviour considered when making an application for an order can have taken place in any part of the United Kingdom, or abroad. This can also include behaviour that took place prior to this Bill coming into force.

Clause 8 - Power to make orders

This clause 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.

Subsection (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 in order to protect another person from that risk.

Subsection (2) (c) provides that the individual to be protected by the order does not have to have been the victim of the acts associated with stalking which provide the grounds for the application. This scenario could for example arise if a perpetrator is stalking other people connected to that individual (such as family members, friends, or co-workers), knowing that this behaviour will impact on the individual who is the principal subject of the stalking acts. This is known as ‘stalking by proxy’. This also covers other scenarios too, for example, a stalker may be known to target unconnected victims who fit a particular description.

Subsection (4) provides that any prohibitions or requirements included within the terms of the order (if deemed necessary as defined in subsection (3)) must, so far as is practicable, avoid conflict with the defendant’s religious beliefs, or their work or educational obligations. The intention of this subsection is to ensure that the terms of the order are, among other things proportionate. This is also designed to enable workability of orders and to avoid conflict with ECHR rights.

Subsection (5) applies when an order is being made in relation to a defendant who is already the subject of another stalking protection order. This scenario could arise, for example, in the case of a serial stalker who is stalking multiple victims. The subsection provides that the terms of the different orders must not contradict each other. For example, the new order cannot require the defendant to attend a perpetrator intervention programme at a location which the earlier order prohibits them from entering.

Subsection (6) provides that the defendant must comply with a prohibition or requirement in all parts of the United Kingdom, unless it is expressly limited to a particular locality. If the defendant lives in NI or was resident in NI when the order was made, or is a UK national then they must comply with any prohibition or requirement in the order, everywhere outside the UK. For example, any prohibition in the order that prohibits any form of contact with the victim must be complied with even if the defendant was to travel outside NI or the UK.

Clause 9 - Duration of orders

This clause sets out the period of time for which an order has effect.

Subsection (1) provides that a provision of an order has effect for a fixed period specified within the terms of the order, or until a further order is made. Where a fixed period is specified for the duration of the order, this must be for at least two years beginning on the day on which the order is made. A further order could be a variation, renewal or discharge of the existing order.

Subsection (2) provides that different time periods may be specified in relation to different prohibitions or requirements included in the terms of the order, as is necessary to protect the other person from risk of stalking.

Clause 10 - Variations, discharges and renewals

This clause sets out how a stalking protection order may be varied, renewed or discharged and who may apply for these measures.

An order may be varied, renewed or discharged on application to a court of summary jurisdiction by either the Chief Constable or the defendant who is subject to the order.

Variations - Subsection (3) (a) sets out that the court may not impose additional prohibitions or requirements on the defendant unless they are necessary in order to protect a person from the risk of stalking.

Renewals - A scenario in which the police may apply to renew an order is 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 risk of stalking.

A scenario in which the police or the defendant may apply to vary an order is if the person being protected moves house or gets a new job and therefore the terms of the order need to be amended in order to reflect the new locations or defined areas which the defendant is prohibited from entering. Another scenario could be if the defendant's stalking behaviour changes and it becomes necessary to amend the terms of the order to continue to protect the victim from harm.

Discharge - A scenario in which the police or the defendant may apply to discharge an order before it expires is if they are satisfied that the order is no longer necessary to protect the victim from risk of stalking. A scenario in which the defendant may not consent for the order to be discharged is if they still consider themselves to pose a risk of stalking to the other person.

Clause 11 - Interim stalking protection orders

This clause 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.

The purpose of this provision is to protect the victim whilst the main application for the stalking protection order is being determined.

Subsection (1) provides that interim orders can prohibit the defendant from doing something, or require the defendant to do something, as the court deems appropriate.

Subsection (3) provides that interim stalking protection orders will be available on application to a court of summary jurisdiction by the Chief Constable, either at the same time as the “main” application is made under clause 7, or in a separate application if the “main” application has already been made.

Subsection (4) provides that the prohibitions and requirements included within the terms of an interim order must, so far as is practicable, avoid conflict with the defendant’s religious beliefs, or their work or educational obligations. The intention of this subsection is to ensure that the terms of the interim order are among other things proportionate. This is also designed to enable workability of orders and to avoid conflict with ECHR rights.

Subsection (5) provides that the defendant must comply with a prohibition or requirement in all parts of the United Kingdom, unless it is expressly limited to a particular locality. If the defendant lives in NI or was resident in NI when the order was made, or is a UK national then they must comply with any prohibition or requirement in the order, everywhere outside the UK. For example, any prohibition in the order that prohibits any form of contact with the victim must be complied with even if the defendant was to travel outside NI or the UK.

Subsections (6), (9) and (10) deal with the duration of an interim order. The starting point is that an interim order has effect only for a fixed period specified in the order (although the order can be discharged early, or the period varied, or the order renewed). If a stalking protection order is made on the main application, or if the main application is withdrawn, the interim order lapses then if it is still in force. If the court decides not to make a stalking protection order on the main application, and the interim order is still in force at the time of that decision, then the interim order (instead of ending at the end of the fixed period) comes to an end on the first occasion when: there is no pending appeal by the Chief Constable to the county court against the refusal; the period, or extended period, for appealing has expired; and there is no pending application made pre-expiry for extension (or further extension) of that period.

Subsection (7) provides that the defendant or the Chief Constable may apply to a magistrates’ court for that order to be varied, renewed or discharged. The process for varying, renewing or discharging orders is set out at Clause 10.

Clause 12 - Content of, and procedure for, orders

This clause sets out what details must be specified within the terms of an order or an interim Order and some procedural details on the operation of the Bill in a court of summary jurisdiction.

Subsection (2) provides that an application to a court of summary jurisdiction for the making, renewal, variation or discharge of a stalking protection order (or interim order) is to be made by complaint. This is the process by which civil matters are commenced in the magistrates' court.

Subsection (3) provides that Article 78(1) of the Magistrates' Courts (NI) Order 1981 (time limits) does not apply to any such application. This means that there is no requirement for a magistrates' court to hear proceedings for an order within six months from the time when the acts associated with stalking were carried out.

Subsections (4) to (7) provide that where a person is under 18 when an application for an order against them is made, or when an application is made to vary or renew or discharge an existing order against them, the application is to be heard in a youth court

Clause 13 - Offence of breaching order

This clause provides that it is a criminal offence to breach the terms of an order or an interim order without reasonable excuse. It will be for a court to decide what constitutes a reasonable excuse in a particular case.

Subsection (2) makes it clear that the offence of breaching an order, although it is an offence under the law of Northern Ireland that can be prosecuted only in the courts of Northern Ireland, covers non-compliance at any place outside Northern Ireland where the order was to be complied with.

Subsection (3) provides the penalty for the offence of breaching a stalking protection order or interim stalking protection order. The maximum penalty on summary conviction (heard in a magistrates' court) is 6 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both. The maximum penalty on conviction on indictment (heard in a crown court) is 5 years imprisonment or a fine, or both.

Subsection (4) means that whether an offence of breaching a stalking protection order (or interim order) is dealt with by a youth court depends on the defendant's age at the time of the prosecution. It ensures that an adult will not be prosecuted in a youth court just because the order they are accused of breaching was made by a youth court when they were a young person.

Clause 14 - Notification requirements

This clause requires a defendant subject to an order or an interim 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.

Subsection (5) provides that the notification requirements set out in this section do not apply to the defendant if they are already subject to notification requirements under Part 2 of the Sexual Offences Act 2003, Part 8 of the Justice (NI) Act 2015 (which relates to Violent Offender Prevention Orders) or Schedule 3 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015. This means that the defendant cannot be subject to other notification requirements at the same time.

Subsection (6) sets out what happens when a relevant defendant transitions between the notification requirements under Part 2 of the Sexual Offences Act 2003, Part 8 of the Justice (NI) Act 2015 (which relates to Violent Offender Prevention Orders) or Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 and the notification requirements in the Bill. In these circumstances, the defendant must notify within three days of the final day that they are subject to other notification requirements. This ensures that there is no gap between two sets of notification requirements.

Subsection (8) sets out the meaning of “home address”.

Clause 15 - Method of notification and related matters

This clause 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.

Subsection (2) provides that a notification must be acknowledged in writing and in such form as the Department of Justice may direct.

Subsections (5) and (6) sets out that fingerprints and/or photographs taken for the purpose of verifying the identity of the person must be destroyed by police no later than the date on which the person ceases to be subject to a stalking protection order or an un-replaced interim stalking protection order.

Clause 16 - Offences relating to notification

This clause 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. The maximum penalty on summary conviction (heard in a magistrates’ court) is 6 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both. The maximum penalty on conviction on indictment (heard in a crown court) is 5 years imprisonment or a fine, or both.

Clause 17 – Guidance

This clause 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.

Clauses 18-20

Clause 18 - Interpretation

This clause defines various words and phrases used within the Bill.

Clause 19 – Commencement

This clause sets out when the provisions will come into force.

Clause 20 - Short Title

This clause gives the short title of the Act.

FINANCIAL EFFECTS OF THE BILL

18. It is considered that a significant proportion of current related offences of harassment and fear of violence will come within the remit of the new stalking offence once in place. The introduction of Stalking Protection Orders will have financial effects for their application by police to the courts and the Department is working closely with criminal justice partners in the assessment of a full financial Business Case to include their provision and training.

HUMAN RIGHTS ISSUES

19. All proposals have been screened and are considered to be Convention compliant.

EQUALITY IMPACT ASSESSMENT

20. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted screening exercises on the proposals, concluding that they did not have significant implications for equality of opportunity and that an equality impact assessment was therefore not necessary. This is based on the fact that the offences and the introduction of Stalking Protection Orders would apply equally to all section 75 categories, albeit that a higher proportion of offenders and victims are male and female respectively.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

21. No direct costs will be created for the private or voluntary sectors. Ultimately it may result in modest savings to employers in the private and voluntary sectors.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

22. A Data Protection Impact Assessment has been carried out. This noted that the Department of Justice will not collect, use, store or share any personal data arising from the creation of the new offences or Stalking Protection Orders. However, criminal justice agencies investigating and prosecuting the new offences and applying for Stalking Protection Orders will need to collect and process personal data on victims, witness and the accused. The data will be processed in line with the robust procedures and protocols already in place for investigating and prosecuting other existing criminal offences.

RURAL NEEDS IMPACT ASSESSMENT

23. A Rural Needs Impact Assessment has been carried out. This noted that the new offence and other provisions in the Bill will apply to all areas of Northern Ireland, both urban and rural. We do however consider that specific action may be required to raise awareness of the new offences in rural areas and that innovative approaches and methods may be required to raise the profile of the offence.

LEGISLATIVE COMPETENCE

24. At Introduction the Minister of Justice had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Protection from Stalking Bill would be within the legislative competence of the Northern Ireland Assembly.”