



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

16.01.2017

NIAR-463-2016

ADRIENNE REILLY

Legislative Position on Stalking and Relevant Statistics in the UK and the Republic of Ireland

The information contained in this briefing note should not be relied upon as legal advice or as a substitute for it.

1 Introduction

From November to December 2016 the Justice Committee conducted a Review of the 'Need for Stalking Legislation for Northern Ireland'. This review consisted of a public call for evidence, as well as the commissioning of three research reports on various aspects of stalking for consideration in early 2017. Paper 1 set out in brief the background to legislation on harassment and stalking in England and Wales, Scotland and Northern Ireland and the prevalence of stalking together with consideration of the existing sources of data that exists in Northern Ireland in relation to harassment.

This paper, looks in greater detail at interpretive legislative provisions and supporting statistics for England & Wales, Scotland and the Republic of Ireland.

2 Background

Whilst there are specific offences provided for with regards to prosecuting perpetrators and providing protections for victims of stalking in England & Wales and Scotland, in Northern Ireland stalking offences must be read into harassment legislation.

This paper looks at the different legislative approaches to providing for protection from and prosecution of the crime of stalking. The England and Wales model builds the offence of stalking into existing harassment legislation while the Scottish model moves to make stalking a specific criminal offence in criminal justice legislation. Currently stalking legislation is in a state of flux in the Republic of Ireland with imminent changes specifically in relation to revenge porn and cyber-bullying in train.

3 England & Wales - Offences Directly Related to Stalking

Legislative Provisions

While the *Protection from Harassment Act 1997* was originally introduced to deal with the problem of stalking, the provisions of the Act go much wider than this. It covers a range of conduct, including harassment motivated by race or religion, some types of anti-social behaviour, and some forms of protest.

The Act gives both criminal and civil remedies. There are two criminal offences:

- pursuing a course of conduct amounting to harassment;
- a more serious offence where the conduct puts the victim in fear of violence

Harassing a person includes alarming the person or causing the person distress. A “course of conduct”, which can include speech, must normally involve conduct on at least two occasions, although there are exceptions to this.

Under this Act, a stalker can be sentenced to up to six months in prison, or, if they put their victim in ‘fear of violence’ up to five years. Breaching a restraining order can also incur a penalty of up to five years in prison.

In addition to the criminal offences, a civil court can impose civil injunctions in harassment cases as well as awarding damages to the victim for the harassment. Breach of such an injunction is a criminal offence. In 2012 the Coalition Government added two specific criminal offences of stalking to the 1997 Act following widespread concern that the Act was not dealing adequately with this problem.¹

¹ P 3, The Protection from Harassment Act, House of Commons, Briefing Paper, Number 6648, 16 May 2016, John Woodhouse & Pat Strickland.

Explicit protections for the crime of Stalking via The Protection of Freedoms Act 2012.

Due to public pressure and high profile campaigns² two new specific offences of stalking were introduced. In November 2012 sections 111 and 112 of *The Protection of Freedoms Act 2012* created new offences of Stalking which were inserted into the Protection from Harassment Act 1997.

S.111 created 2 new offences of stalking by inserting additional sections 2A and 4A into the Protection from Harassment Act 1997, namely s 2A(1) stalking, s 4A(1)(b)(i) stalking involving fear of violence, and s 4A (b)(ii) stalking involving serious alarm or distress.³

Section 2A Offence of Stalking

2A Offence of stalking

(1) A person is guilty of an offence if—

- (a) the person pursues a course of conduct in breach of section 1(1), and
- (b) the course of conduct amounts to stalking.

(2) For the purposes of subsection (1)(b) (and section 4A(1)(a)) a person's course of conduct amounts to stalking of another person if—

- (a) it amounts to harassment of that person,
- (b) the acts or omissions involved are ones associated with stalking, and
- (c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person.

(3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking—

- (a) following a person,
- (b) contacting, or attempting to contact, a person by any means,
- (c) publishing any statement or other material—
 - (i) relating or purporting to relate to a person, or
 - (ii) purporting to originate from a person,
- (d) monitoring the use by a person of the internet, email or any other form of electronic communication,
- (e) loitering in any place (whether public or private),
- (f) interfering with any property in the possession of a person,
- (g) watching or spying on a person.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or both.

² The Protection Against Stalking charity and other campaigners, argued that the 1997 Act was not effective in dealing with stalking. This campaign led to an "Independent Parliamentary Inquiry" by the Justice Unions' Parliamentary Group. Their report, published in February 2012, found that victims of stalking had a profound lack of confidence in the criminal justice system, and recommended that the 1997 Act be amended as part of a package of reforms.

The Coalition Government consulted on whether or not there should be changes to the law, including a separate offence of stalking.

³ Home Office, Guidance Circular 018/2012.

(5) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (4) to 51 weeks is to be read as a reference to six months.

(6) This section is without prejudice to the generality of section 2.

Summary of New Offence of Stalking – s2A

An offence under this provision is a course of conduct which is a form of harassment and in breach of section 1(1) of the Protection from Harassment Order 1997, and where this particular form of harassment can be defined as Stalking.⁴

Definition of Stalking

Stalking is not legally defined. Section 2A (3) of the PHA1997 lists behaviours associated with Stalking. This list is not exhaustive but indicates the types of behaviour in that is considered to be a stalking offence

- (a) Following a person
- (b) Contacting, or attempting to contact, a person by any means
- (c) Publishing any statement or other material relating or purporting to relate to a person, or purporting to originate from a person,
- (d) Monitoring the use by a person of the internet, email or any other form of electronic communication
- (e) Loitering in any place (whether public or private)
- (f) Watching or spying on a person.

It is open to the courts to consider other acts that may constitute stalking not listed here.

According to the Crown Prosecution guidance it is the ‘course of conduct’ assessment that must fit in order for the behaviour to be interpreted as stalking.⁵

S2A relies on the existing s2 offence in the Protection from Harassment Act 1997, as they have to be read together. This means that there must be conduct on at least two occasions which caused the victim, ‘harassment, alarm or distress’.

⁴ P 7, Crown Prosecution Service, Legal Guidance on Stalking and Harassment at http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/

⁵ P 8, Crown Prosecution Service, Legal Guidance on Stalking and Harassment at http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/

The court must then decide whether the ‘course of conduct amounts to stalking’ as set out in S2A (1)(b) and whether ‘the acts or omissions involved are ones associated with stalking’ in s2(2)(b).

2A is also a summary offence and a person found guilty is liable on summary conviction to imprisonment not exceeding 6 months or a fine. Also for this conviction a complaint must be made within six months from the time of the date of the alleged offence.

The test for the prosecutor to consider is whether a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

Powers of Entry and Seizure

2B Power of entry in relation to offence of stalking

(1) A justice of the peace may, on an application by a constable, issue a warrant authorising a constable to enter and search premises if the justice of the peace is satisfied that there are reasonable grounds for believing that—

(a) an offence under section 2A has been, or is being, committed,

(b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,

(c) the material—

(i) is likely to be admissible in evidence at a trial for the offence, and

(ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material (within the meanings given by sections 10, 11 and 14 of the Police and Criminal Evidence Act 1984), and

(d) either—

(i) entry to the premises will not be granted unless a warrant is produced, or

(ii) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(2) A constable may seize and retain anything for which a search has been authorised under subsection (1).

(3) A constable may use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.

(4) In this section “premises” has the same meaning as in section 23 of the Police and Criminal Evidence Act 1984

Section 2B of the Protection from Harassment Act in relation to Section 2A.

In summary a justice of the peace on application by a police constable can issue a warrant to enter and search premises if satisfied that there is reasonable grounds for believing that an offence under s 2A had occurred. Or that there is material on the premises which is likely to be of substantial value to the investigation of an offence, and could be admissible as material evidence in a trial. A constable may use reasonable force. Issues on items subject to legal privilege and what are considered ‘premises’ are covered by the Police and Criminal Evidence Act 1984.⁶

⁶ Privilege, sections 10,11 and 14 of the Police and Criminal Evidence Act 1984.

Section 4A Stalking involving fear of violence or serious alarm or distress

4A Stalking involving fear of violence or serious alarm or distress

(1) A person (“A”) whose course of conduct—

(a) amounts to stalking, and

(b) either—

(i) causes another (“B”) to fear, on at least two occasions, that violence will be used against B, or

(ii) causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities, is guilty of an offence if A knows or ought to know that A's course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress.

(2) For the purposes of this section A ought to know that A's course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.

(3) For the purposes of this section A ought to know that A's course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress.

(4) It is a defence for A to show that—

(a) A's course of conduct was pursued for the purpose of preventing or detecting crime,

(b) A's course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

(c) the pursuit of A's course of conduct was reasonable for the protection of A or another or for the protection of A's or another's property.

(5) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or

(b) on summary conviction, to imprisonment for a term not exceeding twelve months, or a fine not exceeding the statutory maximum, or both.

(6) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (5)(b) to twelve months is to be read as a reference to six months.

(7) If on the trial on indictment of a person charged with an offence under this section the jury find the person not guilty of the offence charged, they may find the person guilty of an offence under section 2 or 2A.

(8) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (7) convicted before it of an offence under section 2 or 2A as a magistrates' court would have on convicting the person of the offence.

(9) This section is without prejudice to the generality of section 4.

In summary - S 4A Stalking involving fear of violence or serious harm or distress

Section 4A(1)(b)(ii) is the **new element** in this legislation.

It creates a significant new offence and applies if a person is guilty if

- (a) The defendant has pursued a *course of conduct*, and
- (b) The *course of conduct* has caused the victim 'serious alarm or distress which has a substantial adverse effect on [the victim's] usual day to day activities'

And the defendant knows or ought to know that their course of conduct will cause the victim to fear on each of these occasions *or* will cause alarm or distress.

Once again an important element here is that the *legal test* as to whether a person is guilty of harassment is based on the *judgement of a reasonable person*. This is unlike most other criminal offences which require some degree of intent, before an offence is committed. With regard to stalking this is important as many stalkers claim they had no intention of harassing their victim even if their actions are totally unwelcome.

Other Key Legislative Areas of Development

Stalking Protection Orders

In December 2015 the UK Home Office issued a consultation paper on 'Introducing a stalking protection order: a consultation', to "explore whether the introduction of a new civil order to protect victims of stalking would be beneficial."⁷ The consultation sought views on the effectiveness of existing interventions; the challenges of identifying stalking in its early stages; how a stalking protection order might work in practice; and what penalty should be imposed for a breach of an order. The consultation closed on 29 February 2016.

Consultation Responses

Key points from respondents are:

- They do not believe that current measures provide sufficient protection to victims of stalking and recognised a gap in measures to protect victims of 'stranger stalking'.
- There are issues of inconsistent responses by the criminal justice system, lack of understanding of stalking amongst specialists and failure to be taken seriously were raised.
- There should be better ways to restrict stalkers including placing geographical restrictions on the perpetrator, the ability to tag and/or monitor the perpetrators movements and activities including online activity.
- Respondents sought that perpetrators change their behaviour through mental health assessment and treatment and attending a perpetrator intervention programme, or awareness of courses and counselling.
- The majority of respondents wanted breach of a stalking protection order to be a criminal offence. Others felt that there was confusion between stalking and harassment, others believed that stalking and harassment were linked and should be covered in any Order.

UK Government Commitment to Stalking Prevention Order

Amber Rudd, Home Secretary announced on December 7th 2016 she was set to introduce the new *Stalking Prevention Order* that will give courts fresh powers to order offenders at an early stage not to go near a person that they have been compulsively pursuing, especially cases involving strangers. She made the announcement as part of a package of government measures to prevent violence against women and girls (VAWG).

It is envisaged this legislation will 'allow for courts to introduce a new civil stalking protection order on suspected stalkers, which will include staying away from their target, restricting internet use, attending a rehabilitation programme or seeking

⁷ Home Office, Introducing a Stalking Protection Order – a consultation, Summary of Responses, 7 December 2016.

treatment for mental health issues.⁸ Breaching the conditions will be a criminal offence and can result in a maximum sentence of 5 years imprisonment.⁹

It is envisaged that these orders will be early intervention mechanisms. This is also specifically for 'stranger stalking' or people 'who have not been in an intimate relationship with their stalker.'

One concern about announcing this as part of a package of government measures to prevent violence against women and girls, is that it presents the offence in a very gendered way. Whilst there is a higher percentage of stalking against women, it is an offence that affects all genders and ages.¹⁰

Criticisms of Stalking Protection Orders

'Critics fear that the orders will be used as a substitute for pursuing criminal prosecutions by poorly trained police and prosecutors unable to gather evidence. They also voiced concerns that breaches would not be rigorously enforced.'¹¹

However, police in England have said that '[T]he launch of stalking protection orders will help us intervene earlier and place controls on perpetrators to prevent their behaviour escalating while the crime is being investigated.'¹²

Voice4Victims campaigner Harry Fletcher says this is 'only an interim measure to tide victims over while the police decided whether to press ahead with a prosecution' and that the real issue is 'why is there so few prosecutions so far under the stalking laws and why does it take so long for police to secure evidence to prosecute.'

Fletcher says there needs to be 'proper training for police and prosecutors and that orders might become a substitute for prosecutions.'¹³

⁸<https://www.theguardian.com/politics/2016/dec/07/amber-rudd-stalking-prevention-orders-stalkers>

⁹ 'New protection for victims of 'stranger stalking', Home Office Website at <https://www.gov.uk/government/news/new-protection-for-victims-of-stranger-stalking>

¹⁰ In the Republic of Ireland in 2012 a woman was sentenced for a fourth time for stalking her former lecturer at his workplace breaching a previous court order that she not have any contact with the man for 10 years see <http://www.irishtimes.com/news/woman-convicted-for-fourth-stalking-incident-1.514775>.

¹¹ Stalking (Sentencing) Bill 2016-2017, Private Members Bill at <http://services.parliament.uk/bills/2016-17/stalkingsentencing.html>, 1st Reading, Second Reading on 20th January 2007.

¹² See footnote 16 (Home Office) and 17 & 18 above. See, Alex Chalk, Motion for leave to bring in a Bill (Standing Order No. 23), 12 Oct 2016, Volume 615 at [https://hansard.parliament.uk/commons/2016-10-12/debates/AA33F98F-E1D8-4B66-9543-A86E873D80D1/Stalking\(Sentencing\)](https://hansard.parliament.uk/commons/2016-10-12/debates/AA33F98F-E1D8-4B66-9543-A86E873D80D1/Stalking(Sentencing)); Stalking (Sentencing) Bill 2016-2017, Private Members Bill at <http://services.parliament.uk/bills/2016-17/stalkingsentencing.html>; Crown Prosecution Services, Violence Against Women and Girls Crime Report 2015-16, <http://www.cps.gov.uk/publications/equality/vaw#a02>

¹³ The Guardian, *Amber Rudd to introduce asbo-style bans for stalkers*, 7, December 2016 at <https://www.theguardian.com/politics/2016/dec/07/amber-rudd-stalking-prevention-orders-stalkers>

Other stalking provisions through legislation under consideration - Policing and Crime Bill 2017

The Policing and Crime Bill had its third reading, a chance to 'tidy up' the bill and make changes, in the Lords on Monday 19 December, 2016.¹⁴

The Lords voted on a change to stalking laws, increasing the maximum penalty for stalking from five to ten years, and, in cases where stalking is aggravated by racial or religious motivation, from seven to fourteen years. 160 members voted for the change; 149 voted against. This change was inserted into the bill as follows:¹⁵

134 Insert the following new Clause –

“Sentencing for stalking offences (1) In section 4A(5)(a) of the Protection from Harassment Act 1997 (stalking involving fear of violence or serious harm or distress), for the words “five years” substitute “ten years”. (2) At the end of section 32(4)(b) of the Crime and Disorder Act 1998 (racially or religiously aggravated harassment etc) insert “save in the case of any offence under section 4A of the Protection from Harassment Act 1997, in which case the person shall be liable to imprisonment for a terms not exceeding 14 years”.

¹⁴ Lords report Stage 3, Monday 13th December 2016,

¹⁵ <http://services.parliament.uk/bills/2016-17/policingandcrime.html>

Statistics

Crown Prosecutorial Services (CPS), Criminal Justice system statistics quarterly: December 2015 (Outcomes by Offence Tables) at <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

		2013	2014	2015
8.Q Stalking	Cautions Issued	7	15	11
	Total Proceeded Against	157	312	299
	Total Found Guilty	53	147	194
	Total Sentenced	42	142	192
	Custody	14	52	60
	Suspended Sentence	14	52	81
	Community Sentence	10	32	38
	Fine	-	-	2
	Absolute Discharge	-	-	-
	Conditional Discharge	2	2	3
	Compensation	1	-	-
	Otherwise Dealt With	1	4	8
	Average Custodial Sentence Length (months)	9.8	10.9	14.1
	Average Fine (£)	-	-	*

According to CPS analysis of this table 'change(s) in most recent years' are that cautions issued were down by 27%, and proceedings down 4%. Those found guilty were up 32%, total sentenced up 35%, those taken into custody up 15%, given a suspended sentence up 56%, those given a community sentence were up 19%.

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
196 Pursue course of conduct in breach of prohibition of harassment, which amounts to stalking	Cautions Issued	-	-	-	-	-	-	-	1	33	31	33	
	Total Proceeded Against	1	6	26	9	-	-	-	8	294	509	481	
	Total Found Guilty	1	3	15	6	-	-	-	2	196	348	335	
	Total Sentenced	1	3	15	6	-	-	-	2	192	349	337	
	Custody	-	-	-	-	-	-	-	-	35	52	41	
	Suspended Sentence	-	-	-	-	-	-	-	-	41	70	97	
	Community Sentence	-	-	-	-	-	-	-	-	80	147	126	
	Fine	1	3	15	5	-	-	-	1	15	41	36	
	Absolute Discharge	-	-	-	-	-	-	-	-	-	-	-	
	Conditional Discharge	-	-	-	1	-	-	-	1	16	23	24	
	Compensation	-	-	-	-	-	-	-	-	-	-	1	
	Otherwise Dealt With	-	-	-	-	-	-	-	-	5	16	12	
	Average Custodial Sentence Length (months)	-	-	-	-	-	-	-	-	-	2.7	3.2	3.4
	Average Fine (£)	*	*	93	96	-	-	-	*	273	299	465	

Second table includes some pre-2012 data, but CPS advised that this is due to a recording error and should be ignored

Crime Survey England and Wales (CSEW) year ending June 2016

The CSEW, formerly known as the British Crime Survey (BCS), is a face-to-face survey asking people who are resident in households in England and Wales about their experiences of a range of crimes in the past year. The survey interviews both adults and children.

Below are some key statistical findings in relation to stalking in particular in relation to intimate personal violence and partner abuse.

Intimate personal violence and partner abuse

This section of the report presents findings from the year ending March 2015 Crime Survey for England and Wales (CSEW) self-completion module on intimate violence which is asked of adults aged 16 to 59. This section covers experience of emotional, financial and physical abuse by partners or family members, as well as sexual assaults and *stalking by any person*. In the year ending March 2015, the section additionally focused on the nature of partner abuse.¹⁶

Main finding related specifically to stalking

The CSEW estimates that 8.2% of women and 4.0% of men reported experiencing any type of domestic abuse in the last year (that is, partner / ex-partner abuse (non-sexual), family abuse (non-sexual) and sexual assault or stalking carried out by a current or former partner or other family member). This is equivalent to an estimated 1.3 million female victims and 600,000 male victims.

Definitions and presentation of statistics from this survey

Intimate violence is the collective term used to describe domestic abuse, sexual assault and stalking. Categories for stalking used in the presentation of these statistics is defined as follows:

domestic abuse: this category combines partner abuse (non-sexual), family abuse (non-sexual) and sexual assault or stalking carried out by a current or former partner or other family member - this broadly matches the Government's definition of domestic violence and abuse

stalking: 2 or more incidents (causing distress, fear or alarm) of receiving obscene or threatening unwanted letters, emails, text messages or phone calls, having had obscene or threatening information about them placed on the

¹⁶ Crime and Justice Survey, England & Wales, Intimate personal violence and partner abuse chapter, see <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolentcrimeandsexualoffences/yearendingmarch2015/chapter4intimatepersonalviolenceandpartnerabuse>

internet, waiting or loitering around home or workplace, or following or watching by any person, including a partner or family member.¹⁷

The year ending March 2015 CSEW showed that (Appendix Table 4.01 (1.59 Mb Excel sheet)):

- for women, the most commonly experienced types of intimate violence since age 16, covered by the survey, were non-sexual partner abuse (20.7%), stalking (20.2%) and sexual assault (19.0%)
- in the last year, non-sexual partner abuse and stalking were the most common forms of the separate types of intimate violence - twice as many women as men reported having experienced non-sexual partner abuse (5.8% of women and 2.5% of men) and stalking (4.9% of women and 2.4% of men)

Intimate violence experienced since the age of 16

Percentage of adults aged 16 to 59 who experienced intimate violence since the age of 16, by sex and headline category, year ending March 2015 Crime Survey for England and Wales

Unit	% victims once or more		
Headline category	Men	Women	All
Partner abuse (non-sexual)	8.6	20.7	14.7
Family abuse (non-sexual)	4.5	7.5	6.0
Any sexual assault (including attempts)	3.8	19.0	11.5
Stalking	9.8	20.2	15.0
Any domestic abuse	13.2	27.1	20.2

¹⁷ FN 1. Crime and Justice Survey, England & Wales, see <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolentcrimeandsexualoffences/yearendingmarch2015/chapter4intimatepersonalviolenceandpartnerabuse>

'In the new questions (from the year ending March 2013 survey onwards), the definition of stalking has been changed to be in line with the legal definition of 2 or more incidents that was introduced in April 2013.'

Nature of partner abuse – types of abuse

The definition of stalking applied in the CSEW covers a wider range of actions and behaviours than the legal definition, and includes being followed, being sent unwanted messages that were obscene or threatening and having personal property interfered with. The CSEW asks respondents about typical behaviours associated with stalking rather than the term itself. This ensures that actions and behaviours experienced are picked up by the survey rather than the respondent's interpretation of them.

Female partner abuse victims were more likely to have experienced stalking than male victims (24% compared with 15%). Between the year ending March 2009 and the year ending March 2015, the percentage of male partner abuse victims experiencing stalking had declined from 37% to 15%. For female victims the decrease has been smaller, with 40% of partner abuse victims experiencing stalking in the year ending March 2009 compared with 24% in the year ending March 2015. These figures capture the percentage of partner abuse victims experiencing stalking and not the number of times that they experience such incidents. The decrease in the proportion of partner abuse victims experiencing stalking is likely to be affected by a change in the definition of stalking in the CSEW in April 2012 where the definition changed from '1 or more incidents' to '2 or more incidents'.

Specific stalking related offenders and victims' data

Appendix table 4.09: Victim-offender relationship for sexual assault or stalking experienced since age 16 by women aged 16 to 59, year ending March 2015 CSEW¹

England and Wales	Adults aged 16 to 59					
	Less serious sexual assault		Serious sexual assault		Stalking	
	Men	Women	Men	Women	Men	Women
	Percentage					
Partner/ex-partner	15.8	24.6	33.0	57.0	28.7	43.0
Family member	6.5	8.4	7.2	10.5	12.8	13.6
Unweighted base - number of adults	827	5,519	116	1,845	2,444	6,342

1. Source: Crime Survey for England and Wales, Office for National Statistics

Table 4.12: Number and types of abuse experienced by victims or any domestic abuse, adults aged 16 to 59, year ending March 2013 to year ending March 2015 CSEW^{1,2,3}

England and Wales	Adults aged 16 to 59		
	Men	Women	All
	Percentage		
One type of abuse	77	69	72
Partner abuse only	46	47	46
Family abuse only	26	14	18
Sexual assault only	0	1	1
Stalking only	5	7	6
Two types of abuse	18	24	22
Partner abuse AND family abuse	5	4	4
Partner abuse AND sexual assault	1	3	2
Partner abuse AND stalking	7	11	10
Family abuse AND sexual assault	1	2	1
Family abuse AND stalking	3	3	3
Sexual assault AND stalking	1	1	1
Three types of abuse	5	7	6
Partner abuse AND Family abuse AND sexual assault	1	1	1
Partner abuse AND Family abuse AND stalking	2	3	3
Partner abuse AND sexual assault AND stalking	1	3	2
Family abuse AND sexual assault AND stalking	1	1	1
Four types of abuse	0	0	0
Partner abuse AND Family abuse AND sexual assault AND stalking	0	0	0
Unweighted base - number of adults (victims of domestic abuse)	1,046	2,658	3,704

1. Crime Survey for England and Wales, Office for National Statistics

2. For cases with missing values for any of the types of abuse it was assumed that the respondent did not experience this abuse.

3. This data is based on combined data from year ending March 2013 and year ending March 2015.

Further Key Relevant Report illustrating prosecutions in relation to the criminal offence of stalking

The Crown Prosecution Service, *Violence Against Women and Girls Crime (VAWG) Report 2015 – 2016* includes specific statistics on stalking. The report is an analysis of the key prosecution issues in each VAWG strand, including stalking.

The essential information on stalking is captured in the two boxes below.

Figure 1 - Total Harassment and stalking offences charged and reaching a first hearing in magistrates’ courts and percentage of total flagged as Domestic Abuse

		2010 - 2011		2011 - 2012		2012 - 2013		2013 - 2014		2014 - 2015		2015 - 2016	
		Volume	Percentage Flagged Domestic Abuse	Volume	Percentage Flagged Domestic Abuse	Volume	Percentage Flagged Domestic Abuse	Volume	Percentage Flagged Domestic Abuse	Volume	Percentage Flagged Domestic Abuse	Volume	Percentage Flagged Domestic Abuse
Total Harassment and stalking offences charged and reaching a first hearing in magistrates’ courts and percentage of total flagged as Domestic Abuse													
Family Law Act 1996 { 42A(1) and (5) }	Breach a non-molestation order - Family Law Act 1996	5281	80.70%	5323	81.40%	5563	79.30%	6498	85.90%	7013	89.70%	6672	93.65%
Protection from Harassment Act 1997 { 2(1) and (2) }	Harassment without violence	8039	60.00%	7713	61.10%	7159	58.90%	8303	63.30%	9180	68.00%	10073	70.90%
Protection from Harassment Act 1997 { 4(1) and (4) }	Harassment - put in fear of violence	2199	64.70%	1632	64.70%	1398	55.40%	1489	63.90%	1839	66.60%	1811	65.71%
Protection from Harassment Act 1997 { 2A(1) and (4) }	Stalking with fear / alarm / distress					72	72.20%	529	72.60%	676	69.70%	643	70.92%
Protection from Harassment Act 1997 { 4A(1)(a)(b)(i) and (5) }	Stalking involving fear of violence					9	88.90%	65	75.40%	133	73.70%	128	67.19%
Protection from Harassment Act 1997 { 4A(1)(a)(b)(ii) and (5) }	Stalking involving serious alarm / distress					10	70.00%	149	55.70%	294	66.00%	331	61.33%
Protection from Harassment Act 1997 { 5(5) and (6) }	Harassment - breach of a restraining order on conviction	5768	68.70%	8447	73.00%	9962	71.80%	11329	77.30%	13126	82.20%	14863	85.76%
Protection from Harassment Act 1997 { 5(5) and (6) }	Harassment - breach of a restraining order after acquittal	154	60.40%	286	70.60%	313	70.30%	322	76.10%	433	77.60%	521	85.22%

Figure 2 - Domestic Abuse Flagged Harassment and stalking offences charged and reaching a first hearing in magistrates’ courts

		2010 - 2011	2011 - 2012	2012 - 2013	2013 - 2014	2014 - 2015	2015 - 2016
		Domestic Abuse Flagged Harassment and stalking offences charged and reaching a first hearing in magistrates’ courts					
Family Law Act 1996 { 42A(1) and (5) }	Breach a non-molestation order - Family Law Act 1996	4262	4333	4414	5584	6294	6248
Protection from Harassment Act 1997 { 2(1) and (2) }	Harassment without violence	4822	4710	4217	5257	6242	7142
Protection from Harassment Act 1997 { 4(1) and (4) }	Harassment - put in fear of violence	1423	1056	775	952	1225	1190
Protection from Harassment Act 1997 { 2A(1) and (4) }	Stalking with fear / alarm / distress	0	0	52	384	471	456
Protection from Harassment Act 1997 { 4A(1)(a)(b)(i) and (5) }	Stalking involving fear of violence	0	0	8	49	98	86
Protection from Harassment Act 1997 { 4A(1)(a)(b)(ii) and (5) }	Stalking involving serious alarm / distress	0	0	7	83	194	203
Protection from Harassment Act 1997 { 5(5) and (6) }	Harassment - breach of a restraining order on conviction	3962	6163	7154	8761	10796	12747
Protection from Harassment Act 1997 { 5(5) and (6) }	Harassment - breach of a restraining order after acquittal	93	202	220	245	336	444

The data is derived from the Crown Prosecution’s Case Management System (CMS) and its associated Management Information System (MIS) which shows the number of defendants, offences and victims or witnesses.

*Stalking and harassment key relevant data from VAWG Report and statistics data cited above:*¹⁸

- Prosecutions were commenced for 12,986 harassment and stalking offences in 2015-16; this is a rise of 864 offences (7.1%) from 2014-15 when 12,122 prosecutions were commenced and is the highest volume ever recorded.
- Of all harassment and stalking offences commencing prosecution, 9,077 (69.9%) were Domestic Abuse (DA) related –an increase of 847 DA related (10.3%) from 8,230 in the previous year, reaching the highest ever recorded volume.

Specifically regarding stalking

- There were 1,102 prosecutions commenced under the new stalking offences (similar to 2014-15 when 1,103 prosecutions commenced).
- Specifically, 745 DA related prosecutions commenced under the stalking offences.
- The 2015 Ministry of Justice (MoJ) data on restraining orders and prosecution of stalking, harassment and breaches of restraining orders is included in Annex 2 of the VAWG data annex of this report. The data indicated more convictions under the more serious stalking offences, Section 4A (s.4A) stalking involving fear of violence/serious alarm or distress compared with s.2A stalking with fear/alarm/distress.

¹⁸ P 6, *Violence Against Women and Girls Report 2015 – 2016*, Crown Prosecution Service. Note: Footnote 9, states the CPS stalking and harassment data is only available from the offence-based data system and therefore cannot include data on police referrals and charging.

*Ministry of Justice Statistics on Stalking, Harassment and Restraining Orders*¹⁹

Stalking and Harassment

In 2015, the MoJ figures^{20 21 22 23} for England and Wales show that 7,243 defendants were prosecuted for s.2 of the Protection of Harassment Act 1997 (s.2 PHA) offences of harassment without violence, compared with 6,660 in 2014. The conviction ratio²⁴ has remained relatively stable since 2013, and was 76% in 2015.

1,176 defendants were prosecuted for s.4 PHA offences of harassment – putting people in fear of violence in 2015, compared with 1,215 in 2014; with 835 convicted, compared with 779 convicted in 2014. The conviction ratio rose from 64% to 71%.

481 defendants were prosecuted for the s.2A PHA offences of pursuing a course of conduct which amounts to stalking with fear/alarm/distress in 2015, compared with 509 in 2014. 335 were convicted, compared with 348 convicted in 2014. The conviction ratio rose slightly, from 68% to 70%.

74 defendants were prosecuted in 2015 under the s.4A PHA offences of stalking involving fear of violence, compared with 94 in 2014; with 45 convicted, compared with

¹⁹ Annex 2, *Violence Against Women and Girls Report 2015 – 2016*, Crown Prosecution Service

²⁰ Fn. 152, Annex 2, *Violence Against Women and Girls Report 2015-2016*, Crown Prosecution Service. The figures given relate to defendants for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences, it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe although this does not apply to the number of restraining orders issued since this takes into account those given as secondary or tertiary disposals for the principle offence.

²¹ Fn. 152 Annex 2, *Violence Against Women and Girls Report 2015-2016*, Crown Prosecution Service. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes, and their inevitable limitations, are taken into account when those data are used.

²² Fn. 153 Annex 2, *Violence Against Women and Girls Report 2015-2016*, Crown Prosecution Service. The number of defendants found guilty in a particular year may differ from the group proceeded against if the proceedings in the magistrates' court took place in an earlier year and the defendants were found guilty at the Crown Court in the following year; or the defendants were found guilty of a different offence to that for which they were originally proceeded against.

²³ Fn. 154 Annex 2, *Violence Against Women and Girls Report 2015-2016*, Crown Prosecution Service. Due to updates following quality assurance in the latest year, including the reclassification of some offences, pre-2015 results may not match those previously published.

²⁴ Fn. 156 Annex 2, *Violence Against Women and Girls Report 2015-2016*. Conviction ratios are calculated as the number of convictions as a proportion of the number of proceedings. This gives a measure of the relative number of defendants who are found guilty within a given year for a certain offence, when compared with the number who are prosecuted that year for the same offence.

38 in 2014. There was a rise in the conviction ratio to 61% compared with 40% in the previous year.

225 defendants were prosecuted in 2015 under the s. 4A offences of stalking involving serious alarm or distress compared with 218 in 2014; with 149 convicted, compared with 109 in 2014. There was a rise in the conviction ratio to 66% compared with 50% in the previous year.

It is interesting to note that although there were fewer stalking prosecutions completed in 2015, compared with the previous year, there were more convictions overall and for the more serious stalking offences. There was an increase of 40 convictions under s.4A stalking involving serious alarm or distress; an increase of seven convictions under s.4A stalking involving fear of violence and a fall of 13 convictions under s.2A stalking with fear/alarm/distress.²⁵

²⁵ CPS data differs from that of MoJ in that:

- CPS data is for the financial year; MoJ data for the calendar year.
- MoJ statistics on restraining orders relate only to where defendants were issued restraining orders in relation to their principal offence.
- MoJ statistics on breaches of restraining orders relate only to defendants prosecuted for such a breach as their principal offence. CPS data includes all offences starting a prosecution, not just those where the restraining order or breach relates to a principal offence.
- MoJ offenders prosecuted data covers cases completed in magistrates' court in 2015, and therefore includes both completed and live cases in the Crown Court.
- MoJ offenders convicted covers those convicted in 2015, who may have been prosecuted in previous years.
- MoJ conviction ratio is the number of defendants convicted divided by the number of defendants prosecuted (there may be some convictions in 2015 for cases that were prosecuted prior to 2015; and there will be some prosecutions in this data that are not yet completed at the Crown Court), P. 101 Annex 2, *Violence Against Women and Girls Report 2015 – 2016*, Crown Prosecution Service

SCOTLAND

Legislative Provisions

As with other jurisdictions extensive debate has taken place over the past two decades in relation to codifying the crime of stalking on the statute books in Scotland.

While sections 8-11, of the *Protection of Harassment Act 1997* (mentioned above and detailed in Paper 1 of this series) also included provisions for Scotland, harassment was not a statutory offence under Scots Law until the *Criminal Justice and Licensing (Scotland) Act 2010* came into force on 13 December 2010. Prior to this the crime of stalking was prosecuted under the common law ‘breach of the peace’ provisions.

It was the campaign of Ann Moulds, herself a victim of stalking, and others that also assisted in getting effective change in this regard informing the provisions of the *Criminal Justice and Licensing (Scotland) Act 2010*. Along with changes in Scotland, her campaign informed the changes under the *Protection of Freedoms Act (2012)* in England and Wales, outlined above. Her work also informed a wider campaign for getting stalking successfully inserted into the Council of Europe’s European Convention (Istanbul Treaty) the only legally binding treaty of its kind. Ratified on 1 August 2014, it places a requirement on European member states to recognise stalking as a specific crime.

Under the *Criminal Justice and Licensing (Scotland) Act 2010* stalking was recognised for the first time in legislation anywhere in the UK. With regards to stalking, this legislation sought to create a specific offence of stalking and a wider offence of threatening, alarming or distressing behaviour. It was intended that the second offence, under section 38, “could be used to prosecute both stalking and other activities which might be difficult to successfully prosecute as a result of...court decisions clarifying the scope of the existing common law offence of breach of the peace”.²⁶

Section 39 of the Act provides a comprehensive, but not exhaustive list of behaviour, purposely, so that other forms of behaviour causing a person to suffer ‘fear or alarm’ may be read into it.

²⁶ SpiCe Briefing, Frazer McCallum, Criminal Justice and Licensing (Scotland) Bill: Stage 3, 4 June 2010, 10/35, The Scottish Parliament.

39 Offence of stalking

(1) A person (“A”) commits an offence, to be known as the offence of stalking, where A stalks another person (“B”).

(2) For the purposes of subsection (1), A stalks B where—

(a) A engages in a course of conduct,

(b) subsection (3) or (4) applies, and

(c) A's course of conduct causes B to suffer fear or alarm.

(3) This subsection applies where A engages in the course of conduct with the intention of causing B to suffer fear or alarm.

(4) This subsection applies where A knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause B to suffer fear or alarm.

(5) It is a defence for a person charged with an offence under this section to show that the course of conduct—

(a) was authorised by virtue of any enactment or rule of law,

(b) was engaged in for the purpose of preventing or detecting crime, or

(c) was, in the particular circumstances, reasonable.

(6) In this section—

“conduct” means—

(a) following B or any other person,

(b) contacting, or attempting to contact, B or any other person by any means,

(c) publishing any statement or other material—

- (i) relating or purporting to relate to B or to any other person,
- (ii) purporting to originate from B or from any other person,
- (d) monitoring the use by B or by any other person of the internet, email or any other form of electronic communication,
- (e) entering any premises,
- (f) loitering in any place (whether public or private),
- (g) interfering with any property in the possession of B or of any other person,
- (h) 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,
- (i) watching or spying on B or any other person,
- (j) acting in any other way that a reasonable person would expect would cause B to suffer fear or alarm, and

“course of conduct” involves conduct on at least two occasions.

(7) A person convicted of the offence of stalking is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

(8) Subsection (9) applies where, in the trial of a person (“the accused”) charged with the offence of stalking, the jury or, in summary proceedings, the court—

(a) is not satisfied that the accused committed the offence, but

(b) is satisfied that the accused committed an offence under section 38(1).

(9) The jury or, as the case may be, the court may acquit the accused of the charge and, instead, find the accused guilty of an offence under section 38(1).

In summary, *Section 39* creates an offence of 'stalking'. Subsection (1) provides that a person (A) who stalks another person (B) commits an offence. Subsection (2) sets out what the elements of stalking are: that A stalks B where he engages in a course of conduct and either subsection (3) or subsection (4) applies and A's course of conduct causes B to suffer fear or alarm.

- Subsection (3) applies where A engages in a course of conduct with the intention of causing B to suffer fear or alarm.
- Subsection (4) applies where A engages in a course of conduct which he knows, or ought in all the circumstances to know would be likely to cause B to suffer fear or alarm.
- Subsection (5) provides for three defences to the offence. The first is that A's actions were authorised by virtue of any enactment or rule of law. The second is that A engaged in the conduct for the purpose of preventing or detecting crime. The third is that the course of action was, in the particular circumstances, reasonable.
- Subsection (6) provides for a definition of 'conduct' necessary for stalking. It provides that, for the purpose of the offence of 'stalking', a 'course of conduct' involves conduct on at least two occasions. A definition of 'conduct' is provided at subsection (6). It defines 'conduct' as any of the following:
 - o following B or any other person;
 - o contacting, or attempting to contact, B or any other person by any means;
 - o publishing any statement or other material which either relates to, or purports to relate to B or to any other person, or purports to originate from B or from any other person (for example, publishing on the internet derogatory or defaming material relating to B or to a third person such as B's partner or child)
 - o monitoring the use by B or by any other person of the internet, email or any other form of electronic communication (for example, by installing spyware on their computer to enable their emails or internet use to be tracked);
 - o entering any premises (for example, B's home or place of work, or the home or place of work of a member of B's family);
 - o loitering in any place (whether public or private);
 - o interfering with any property in the possession of B or of any other person;
 - o 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;
 - o watching or spying upon B or any other person;
 - o or acting in any other way that a reasonable person would expect would cause B to suffer fear or alarm.

Subsection (7) provides that the maximum penalty on conviction on indictment is imprisonment for a term not exceeding 5 years or a fine or both, and the maximum penalty on summary conviction is imprisonment for a term not exceeding 1 year or a fine not exceeding the statutory maximum or both.

Subsection (8) and (9) together provide that, where, in the trial of a person charged with the offence of stalking, the court or jury is not satisfied that the accused committed the offence, but is satisfied that the accused committed an offence under section 38(1) of ‘threatening or abusive behaviour’, the jury or, as the case may be, the court, may acquit the accused of the charge and instead find the accused guilty of an offence under section 38(1).²⁷

Section 38 of the 2010 Act provides a second offence related to stalking, of ‘threatening and abusive behaviour.’

38 Threatening or abusive behaviour

(1) A person (“A”) commits an offence if—

(a) A behaves in a threatening or abusive manner,

(b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and

(c) A intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.

(2) It is a defence for a person charged with an offence under subsection (1) to show that the behaviour was, in the particular circumstances, reasonable.

(3) Subsection (1) applies to—

(a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done, and

²⁷ Criminal Justice and Licensing (Scotland) Act, 2010, Explanatory Notes
<http://www.legislation.gov.uk/asp/2010/13/notes/division/2/2/11>

(b)behaviour consisting of—

(i)a single act, or

(ii)a course of conduct.

(4)A person guilty of an offence under subsection (1) is liable—

(a)on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both, or

(b)on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

In Summary, Section 38 Subsection (1) provides that it is an offence for a person to behave in a threatening or abusive manner where that behaviour would be likely to cause a reasonable person to suffer fear or alarm and he or she either intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.

Subsection (2) provides a defence for a person who has been charged with an offence of threatening or abusive behaviour to show that the behaviour was, in the particular circumstances, reasonable.

Subsection (3) provides, for the avoidance of doubt, that this section applies to behaviour of any kind, including things said or otherwise communicated as well as things done, and that it applies both in respect of behaviour consisting of a single act and behaviour consisting of a course of conduct (e.g. the repeated sending of threatening texts or emails or repeatedly following them from their home or place of work).

Subsection (4) provides that the maximum penalty on conviction on indictment is imprisonment for a term not exceeding 5 years or a fine or both. The maximum penalty

on summary conviction is imprisonment for a term not exceeding 1 year or a fine not exceeding the statutory maximum or both.²⁸

Plea Bargain Changes

The Crown Office and Procurator Fiscal Service in Scotland agreed to no longer enter plea bargains with stalkers, following the case of Frances Carroll.²⁹ Her stalker originally faced two charges of stalking against her and another woman, Ashley McCann. Her case was dropped to allow to secure prosecution for another crime of stalking against Ashley McCann, which was also lowered from a section 39 charge of stalking to a section 38 charge of abusive and threatening behaviour, an offence linked to stalking as we have seen above.

Both women were unhappy with application in this manner by the criminal justice system, and in light of this Ashley McCann took the matter to the Justice Minister, and Frances Carroll complained to the Crown Office. A full review was carried out, and on the back of that the Procurator Fiscal agreed that the acceptance of a plea of not guilty should never have happened and that all prosecutors presenting in court have been advised that pleas of not guilty should not be accepted without evidence being heard at trial.

Procurators fiscal and their deputies are now being told that all evidence in stalking trials must be heard and tested in court.³⁰

²⁸ Criminal Justice and Licensing (Scotland) Act, 2010, Explanatory Notes
<http://www.legislation.gov.uk/asp/2010/13/notes/division/2/2/10>

²⁹ Stalking – in the House of Commons at 2:30 pm on [21st November 2013](#) see
<https://www.theyworkforyou.com/debates/?id=2013-11-21a.1441.0>

³⁰ This all happened on the back of a newspaper campaign, see <http://www.dailyrecord.co.uk/news/scottish-news/crown-office-apologise-stalker-victim-2811258>

STATISTICS

Criminal Justice and Licensing (Scotland) Act 2010 – Stalking (R013019)³¹

The following information is from a recent request under the Freedom of Information (Scotland) Act 2002 (FOISA) from 4 May 2016:

1. *“How many charges have been referred to COPFS under Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 (offence of stalking)*
2. *Of the charges reported, how many prosecutions under Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 were undertaken?*
3. *Of these prosecutions, how many charges:*
 - *Were convicted*
 - *Were acquitted*
 - *Prosecution is still ongoing*
 - *Charge was discontinued by the prosecution*
4. *For points 1, 2 and 3 above, can you please provide a breakdown for 2010, 2011, 2012, 2013, 2014 and so far in 2016.”*

The Crown Office and Procurator Fiscal Service also included figures for 2015 in the response.

For this FOI on Section 39 charges the Crown Office and Procurator Fiscal Service also re-examined previous figures on their website and noted small differences in some of the figures, accordingly included the updated figures in this response and on their site.³²

The information requested is summarised in the table below.

This information is correct as at 17 May 2016. All of the data corresponds with the financial year in which the charge was raised, i.e, convictions for charges raised in 2010-11 are recorded in the 2010-11 data though the conviction may not have occurred during that period. The number of prosecutions ongoing should be taken into account in interpreting the figures, particularly for 2014-15 and 2015-16 where there are a significant number of prosecutions which have not yet concluded.

³¹ These are most recent results from a Freedom of Information request to the Crown Office and Procurator Fiscal Service, <http://www.copfs.gov.uk/foi/responses-we-have-made-to-foi-requests/38-responses2016/1320-criminal-justice-and-licensing-scotland-act-2010-stalking-27-05-2016-r013019>

³² Note: In respect of the small differences, COPFS case management database is a live, operating database. It is designed to meet their business needs in relation to the processing of criminal cases, and the information within it is structured accordingly. The COPFS do not have a separate statistical database, and hold only operational data needed for business purposes. This does mean that the data contained therein can change as live cases are updated.

Charges reported to COPFS under S39 Criminal Justice and Licensing (Scotland) Act 2010							
(Legislation came into force 13 December 2010)							
		Financial Year Reported					
		2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Total Charges Reported		83	437	560	911	1,453	1,635
Charges:-	Convicted	36	176	252	476	688	401
	Not Convicted	12	78	99	172	229	79
	Ongoing			3	41	214	820
	Prosecution Discontinued	9	51	59	69	109	49
Charges Prosecution Commenced		57	305	413	758	1,240	1,349

From the above table we can see that there has been a marked increase over the years in prosecutions since the inception of the Act.

If you compare this to the prosecutions in England and Wales above³³, in 2015 there were only 299 cases commenced and 194 found guilty, whereas in Scotland there were 1,240 cases commenced, and 688 convicted.

Commentators have put this down to a number of things. The principal reason given is that Scotland have appointed a national lead prosecutor for all cases involving stalking.³⁴ This role acts as an expert resource to prosecutors considering and prosecuting offences of stalking. Also, only prosecutors who have undergone specialist training on victims and witnesses of domestic abuse are permitted to prosecute stalking cases.

Victims of stalking are also referred to a dedicated specially trained Victim Information and Advice Service of the Crown Office and Procurator Fiscal Service (COPFS). There is also a case recovery strategy in place, which can be used if a victim is failed by the criminal justice system and ensures that there is timely review of a case.

Scotland Crime and Justice Survey, 2015³⁵

The Scottish Crime and Justice Survey(SCJS) is a large-scale social survey which asks people about their experiences and perceptions of crime. The 2014/15 survey is based on around 11,500 face-to-face interviews with adults (aged 16 or over) living in private households in Scotland.

³³ See Table on Page 12 of this report.

³⁴ Les Brown is the current National Stalking Lead.

³⁵ Page 5 in 2014/15 Scottish Crime and Justice Survey: Sexual Victimization and Stalking, Dr Kath Murray Scottish Centre for Crime and Justice Research, Scottish Government Social Research 2016. Main findings from the 2014/15 Scottish Crime and Justice Survey were published on 15 March 2016. This report provides additional findings and evidence on stalking, harassment and sexual victimisation see <http://www.gov.scot/Resource/0050/00500370.pdf>

Key Findings – Sexual Victimization and Stalking

This report examines experiences of stalking and harassment, serious sexual assault, and less serious sexual offending amongst SCJS respondents from persons aged 16, and within the last 12 months

The *key findings* are shown below.

- Overall, 6.4% of adults experienced at least one type of SCJS stalking and harassment in the last 12 months, and 1.7% experienced more than one type.
- The most common types of stalking and harassment involved indirect contact. Amongst those who had experienced stalking and harassment in the last 12 months, 45.0% had received unwanted emails and texts, 32.7% received silent, threatening or unwanted phone calls, and 21.9% were subject to obscene or threatening online contact.
- The survey found no statistically significant difference between the proportion of women and men who experienced at least one type of SCJS stalking and harassment (at 6.8% and 6.0% respectively).
- Young people, particularly young women, experienced a higher than average level of stalking and harassment: 9.7% of 16 to 24 year olds had experienced at least one type of SCJS stalking and harassment in the last 12 months. This figure was higher still for 16 to 24-year-old women at 12.7%.
- A higher proportion of people living in the 15% most deprived areas experienced at least one type of SCJS stalking and harassment in the last 12 months, compared to those living in the rest of Scotland (9.4% and 5.9% respectively).
- Respondents classified as 'victims' in the main SCJS questionnaire experienced higher levels of stalking and harassment, compared to non-victims (11.4% and 5.5% respectively).
- Just over a third (36.4%) of those who had experienced SCJS stalking and harassment in the last 12 months had also experienced partner abuse in the same period.
- More than half (54.9%) of those who experienced at least one form of SCJS stalking and harassment in the last 12 months knew the offender in some way, among whom 15.0% said the offender was their partner. Nearly a third (30.8%) did not know the offender at all.

- Around one fifth of those (18.9%) who experienced at least one type of SCJS stalking and harassment in the last 12 months said that the police came to know about the most recent incident. More women than men said that the police came to know about the most recent incident (at 23.2% and 13.5% respectively).

REPUBLIC OF IRELAND

Stalking is again not explicitly codified in any legislation in the Republic of Ireland beyond general provisions. Stalking is deemed to be governed by *Section 10 of the Non-Fatal Offences Against the Person Act 1997*.

This section derived from the Law Reform Commission's 1994 *Report on Non-Fatal Offences Against the Person* which recommended that "acts which interfere seriously with a person's right to a peaceful and private life should be captured by the criminal law and not simply those which give rise to a fear of violence.

An offence of harassment would capture, for example, the acts of the infatuated psychotic who follows a woman in order to gain her affections."³⁶ While s 10 does not use the term "stalking" the Minister for Justice at the time, Nora Owen, commented during an Oireachtas debate that "[s]ection 10 provides for the important new offence of harassment which is aimed at what is commonly called stalking."³⁷ It was 'enacted in order to permit intervention to stop and punish conduct amounting to stalking at earlier stages than had been possible before then, and to obviate the need to rely on invocation of assault and criminal damage provisions.'³⁸

Section 10 provides:

Harassment.

10.—(1) Any person who, without lawful authority or reasonable excuse, by any means including by use of the telephone, harasses another by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence.

(2) For the purposes of this section a person harasses another where—

(a) he or she, by his or her acts intentionally or recklessly, seriously interferes with the other's peace and privacy or causes alarm, distress or harm to the other, and

(b) his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other's peace and privacy or cause alarm, distress or harm to the other.

³⁶ Law Reform Commission, *Issues Paper on Domestic Violence, Harassment* (LRC IP 2-2013)

³⁷ Para 2.11, Law Reform Report, *Aspects of Domestic Violence*, LRC 111-2013 at <http://www.lawreform.ie/fileupload/Reports/r111.pdf> see also Vol. 477 *Dáil Éireann Debates*, 15 April 1997, Second Stage debate on *Non-Fatal Offences against the Person Bill 1997*

³⁸ COSAINT, *Covering the Criminal Courts of Ireland and Criminal Justice, focusing on rights of the accused and offenders, and personal rights, Stalking is not a specific offence in Irish Law. Should it be?* December 25, 2012 at <https://cosaint.wordpress.com/2012/12/25/stalking-is-not-a-specific-offence-in-irish-law-should-it-be/>

(3) Where a person is guilty of an offence under *subsection (1)*, the court may, in addition to or as an alternative to any other penalty, order that the person shall not, for such period as the court may specify, communicate by any means with the other person or that the person shall not approach within such distance as the court shall specify of the place of residence or employment of the other person.

(4) A person who fails to comply with the terms of an order under *subsection (3)* shall be guilty of an offence.

(5) If on the evidence the court is not satisfied that the person should be convicted of an offence under *subsection (1)*, the court may nevertheless make an order under *subsection (3)* upon an application to it in that behalf if, having regard to the evidence, the court is satisfied that it is in the interests of justice so to do.

(6) A person guilty of an offence under this section shall be liable—

(a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 7 years or to both.

The offence is punishable on summary conviction to a fine not exceeding £1,500 (2,500 euro) or to imprisonment for a term not exceeding 12 months or to both. Or on conviction on indictment to a fine or to imprisonment for a term not exceeding 7 years or to both. This is a two-way offence, triable both on indictment and summarily, and therefore recognises the severity of a wide range of potential offences.

This also provides for making court orders, so that an offender shall be prevented for contacting a person for a specific period, or to communicate by any means or to approach the person within a specific distance with regards to home or work. Section 10 defines behaviour that can amount to harassment as ‘following, watching, pestering, besetting or communicating’, and meaning are defined through relevant case law and prior legislation.³⁹

In a project the Law Reform Commission undertook in 2013 on ‘Aspects of Domestic Violence’, the first question they addressed was “whether this list encompasses all types of harassing behaviour, including “stalking”, that should be criminalized.”

Some respondents said there should be no description of harassing conduct in section 10, but that it should be described as any behaviour that intentionally or recklessly

³⁹ Page 52, B Section (2) para 2.12 *Defining harassing behaviour*, Law Reform Report, *Aspects of Domestic Violence*, LRC 111-2013 at <http://www.lawreform.ie/fileupload/Reports/r111.pdf>

“seriously interferes with the other’s peace and privacy or cause alarm, distress or harm to the other” that should be criminalized.”⁴⁰

The Law Reform Commission were informed by the Office of the Director of Public Prosecutions that ‘the majority of section 10 prosecutions arise in a domestic violence context and typically involved a person being harassed by a former partner where he or she persistently waits outside the complainant’s home or place of work...’ and the Commission notes that this “behaviour would be colloquially be considered to be ‘stalking’.”⁴¹

Another consultee said that section 10 is rarely used to ‘protect’ women who are being stalked, and suggested that there should be a specific ‘stalking offence’, which would provide a specific definition of stalking behaviour, which would include examples of the behaviour that can amount to stalking...”⁴²

It was also suggested that the list of behaviour that can amount to harassment should not be exhaustive but include a general ‘catch-all’ provision.⁴³

‘Persistently’ requirement

There are a number of different case law interpretations of what constitutes the ‘persistently’ requirement under section 10 of the 1997 Act. The Law Reform Commission notes that the leading interpretation comes from *Director of Public Prosecutions (O’Dowd) v Lynch*⁴⁴.

McCarthy J in the High Court cited the English case law on the interpretation of the *Protection from Harassment Act 1997*, even though the English act does not use the word ‘persistent’ but instead ‘course of conduct’ which as we note from the section on English legislation above, that this ‘must involve conduct on at least two occasions.’

“McCarthy J held that the requirement of persistence might be fulfilled by “incidents which are separated by intervening lapses of time” (the facts of *Lynch* falling into this

⁴⁰ Page 53, B Section 2 para 2.15, *Legal Issues Sub-Committee (LISC) of the National Steering Committee on Violence against Women (NSCVAW)* state this in the Law Reform Report, Aspects of Violence, LRC 111-2013 at <http://www.lawreform.ie/fileupload/Reports/r111.pdf>

⁴¹ Page 54, B Section 2 para 2.16, *Legal Issues Sub-Committee (LISC) of the National Steering Committee on Violence against Women (NSCVAW)* state this in the Law Reform Report, Aspects of Violence, LRC 111-2013 at <http://www.lawreform.ie/fileupload/Reports/r111.pdf>

⁴² Page 54, *Defining harassing behaviour*, Law Reform Report, *Aspects of Domestic Violence*, LRC 111-2013 at <http://www.lawreform.ie/fileupload/Reports/r111.pdf>

⁴³ Note: However, in Ireland the *eiusdem generis* rule applies, which means that if a general word (such as harassment) is followed by particular or specific words, the general word is presumed to be restricted to the same type of matter of the specific words, see Page 55 & 56, *Defining harassing behaviour*, Law Reform Report, *Aspects of Domestic Violence*, LRC 111-2013 at <http://www.lawreform.ie/fileupload/Reports/r111.pdf>

⁴⁴ Page 57 *Defining harassing behaviour*, Law Reform Report, *Aspects of Domestic Violence*, LRC 111-2013 at <http://www.lawreform.ie/fileupload/Reports/r111.pdf> see also *Director of Public Prosecutions (O’Dowd) v Lynch* [2008] IEHC 183, [2010] 3 IR 434.

category); and secondly “incidents capable of being severed even if they are not so separated or, to put the matter another way immediately succeed each other.”⁴⁵

He also stated that the concept of persistence was ultimately a matter for the trier of fact, the District Court Judge in a summary offence or a jury if the prosecution was on indictment.⁴⁶

The corresponding requirement for persistence is ‘course of conduct’ in England and Wales and Scottish legislation and is discussed in previous sections above.

Criticism of Legislation

Women’s Aid and other commentators have argued that in practice the definition of harassment in Section 10 is complex and hard to prove, and that this provision is rarely used to protect women who are stalked in particular by their partners.⁴⁷

‘The fundamental weakness in the detection and prosecution of harassment and stalking offences is the failure to recognise, and the failure to adequately respond in time, or at all.’⁴⁸

As in other jurisdictions there is a call for a specific offence of stalking to be introduced with a comprehensive, but not exhaustive definition, including cyber-bullying, as well as calling for stalking to be recognised as a ground for a safety order. This would allow for protection through the civil courts when a criminal court approach is not feasible or appropriate.⁴⁹ This is in line with the move in England and Wales for a Stalking Prevention Order

New Plan to prevent Stalking and revenge porn in Republic of Ireland

As of December 2016, the Minister for Justice, Frances Fitzgerald received Cabinet approval to legislate on making stalking, including cyber-stalking, and revenge porn criminal offences. The approval was given at a meeting at the end of 2016 to draft the Non-Fatal Offences (Amendment) bill to address loopholes in current legislation. The minister will include two new offences including making it illegal to intentionally post

⁴⁵ This is a complex area of case law and there are other cases discussed here which can further inform a policy and legal development on stalking and should be drilled into further in terms of interpretation of ‘persistence’ or ‘code of conduct’. L

⁴⁶ Page 57, Section 2 para 2.23 *Defining harassing behaviour*, Law Reform Report, *Aspects of Domestic Violence*, LRC 111-2013 at <http://www.lawreform.ie/fileupload/Reports/r111.pdf>

⁴⁷ Ireland fails to protect human rights of women affected by domestic violence, Margaret Martin, Irish Times, 23 June 2015 at <http://www.irishtimes.com/opinion/ireland-fails-to-protect-human-rights-of-women-affected-by-domestic-violence-1.2260281>

⁴⁸ COSAINT, *Covering the Criminal Courts of Ireland and Criminal Justice*, focusing on rights of the accused and offenders, and personal rights, *Stalking is not a specific offence in Irish Law. Should it be?* December 25, 2012 at <https://cosaint.wordpress.com/2012/12/25/stalking-is-not-a-specific-offence-in-irish-law-should-it-be/>

⁴⁹ Ireland fails to protect human rights of women affected by domestic violence, Margaret Martin, Irish Times, 23 June 2015 at <http://www.irishtimes.com/opinion/ireland-fails-to-protect-human-rights-of-women-affected-by-domestic-violence-1.2260281>

intimate images of a person online without their consent. It will also extend the offence of harassment to include activity online and social media. As well as expand the offence of sending threatening or indecent messages to digital forms of communication.

The Law Reform Commission proposed that the new and extended offences carry a summary conviction of a fine not exceeding 5,000 euro and up to 12-months imprisonment, or on conviction on indictment an unlimited fine and up to 7-years imprisonment. A public consultation will precede any drafts heads of Bill.

STATISTICS

As stalking is not a stand-alone offence in the Republic of Ireland, statistics noted are in relation to harassment offences and are codified as:

033 Harassment and related Offences under Quarterly Gardai (Police) statistics.

Recorded Crime Offences (Number) by Type of Offence and Quarter

2012 Q1	2012 Q2	2012 Q3	2012 Q4	2013 Q1	2013 Q2	2013 Q3	2013 Q4	2014 Q1	2014 Q2	2014 Q3	2014 Q4	2015 Q1	2015 Q2	2015 Q3	2015 Q4
526	505	431	403	395	387	374	347	371	370	344	395	470	332	348	343

Figures relate to information provided by the Gardai one week following the end of the last quarter displayed. (Reading the above information - 2012Q1 = Year 2012, and Quarterly Yearly figures)

In 2012, there were 1,865 harassment and related offences over a period of one year, in 2015 there were 1,493.⁵⁰

⁵⁰ Central Statistics Office, Republic of Ireland see

http://www.cso.ie/px/pxeirestat/DATABASE/Eirestat/Recorded%20Crime/Recorded%20Crime_statbank.asp?sp=Recorded

ANNEX 1 – KEY LEGISLATION IN ENGLAND & WALES AND SCOTLAND RELATED TO STALKING

ENGLAND & WALES KEY LEGISLATION RELEVANT TO THE OFFENCE OF STALKING

Crime and Disorder Act 1998, Part II, S.32 [Racially or religiously aggravated] harassment

Prosecutors should note that there may be cases of stalking and harassment which may be linked with racial or religious hatred.

Section 2A and 4A (PHA 1997) Stalking offences which are also racially and religiously aggravated are covered under Part 11 of Schedule 9 of the Protection of Freedoms Act 2012. Prosecutors should consider Section 32 of the Crime and Disorder Act 1998 (CDA 1998) which provides for two racially or religiously aggravated harassment offences, provided the racial or religious aggravation test in section 28 of the CDA 1998 Acts met.

Under section 32(1) of the CDA 1998, a person is guilty of an offence under this section if he commits-

- a) an offence under s2 or s2A of the Protection from Harassment Act 1997 (offences of harassment and stalking); or
- b) an offence under s4 or s4A of that Act (putting people in fear of violence and stalking involving fear of violence or serious alarm or distress), which is racially aggravated for the purposes of this section.

Under section 32(5) of the CDA 1998, if, on the trial on indictment of a person charged with an offence falling within subsection (1)(a), the jury find him not guilty of the offence charged; they may find him guilty of either basic offence mentioned in that provision.

Under 32(6) CDA 1998 if, on the trial on indictment of a person charged with an offence falling within subsection (1)(b), the jury find him not guilty of the offence charged, they may find him guilty of an offence falling within subsection (1)(a).

Domestic Violence, Crime and Victims Act 2004, Section 12 extending the availability of restraining orders to all offences, provides the court with the power to make a restraining order even when a person has been acquitted, where the court considers it necessary to do so to protect a person from ongoing stalking or harassment from the defendant.

Malicious Communications Act 1998 , Section 1, offence to send indecent, offensive or threatening letter, electronic communication or other article to another person
Anti-Social Behaviour, Crime and Policing Act 2014 PART 14 (General), SCHEDULE 3 Schedule to be Inserted as Schedule 2A to the Housing Act 1985
Criminal Justice Act 2003, Schedule 15, Par 1 , Specified Violent Offences for the Purposes of Chapter 5 of Part 12, Section 224 Part 1, Specified Violent Offences, Section 57
Criminal Justice and Police Act 2001, Schedule 1, Part 1 Powers to which Section 50 Applies
Housing Act 1985 , Schedule 2A, Absolute Ground for Possession for Anti-Social Behaviour: Serious Offences
Modern Slavery Act 2015 , Schedule 4, Offences to which Defence in section 45 Does not Apply
Police Act 1997 , Schedule 8A Offences which must always be Disclosed
Postal Services Act 2000 , Sections 85
Communications Act 2003 , Section 127

SCOTLAND KEY LEGISLATION RELATED TO STALKING

Victims and Witnesses (Scotland) Act 2014, Section 8 Certain offences; victim's right to specify gender of interviewer – 8.5 Types of Offence, 8.5 (e) Stalking; & Section 10 Vulnerable witnesses, specifically 10 (c) the offence is alleged to have been committed against the person in proceedings for (v) an offence of stalking

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2016, Article 2A Common Law Offences, Stalking and Harassment, 45 and 46.

Police Act 1997 and the protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No 2) Order 2015, Stalking and Harassment

Crime and Disorder Act 1998, Section 33 created a new Scottish criminal offence of 'Racially Aggravated Harassment' punishable with up to 7 years' imprisonment. Section 96 laid down that where any criminal offence was proved to be racially aggravated that fact should be taken into account by the court in determining sentence.

Section 19, allows local authorities in Scotland to apply to a sheriff court for a person to be made subject to an Anti-Social Behaviour Order