

Protection from Stalking Bill

[AS INTRODUCED]

LEGISLATIVE COMPETENCE

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.”

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[AS INTRODUCED]

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A

BILL

TO

Provide protection from stalking, and from threatening or abusive behaviour, and for related purposes.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Offences

Offence of stalking

1.—(1) A person (“A”) commits an offence (in this Act referred to as the offence of stalking) where—

- 5 (a) A engages in a course of conduct,
(b) A’s course of conduct—
(i) causes another person (“B”) to suffer fear, alarm or substantial distress,
or
(ii) is such that a reasonable person, or a reasonable person who has any
10 particular knowledge of B that A has, would consider to be likely to
cause B to suffer fear, alarm or substantial distress, and
(c) at least one of the further conditions applies.
- (2) The further conditions are—
(a) that A engages in the course of conduct with the intention of causing B to
15 suffer fear, alarm or substantial distress;
(b) that 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,
alarm or substantial distress.
- (3) If—
20 (a) A is a UK national or is habitually resident in Northern Ireland, and
(b) A’s course of conduct consists of or includes conduct occurring in a
country, or territory, outside the United Kingdom,

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the course of conduct is to be treated for the purposes of this section as if it occurred in Northern Ireland.

(4) In subsections (1) to (3) and this subsection—

“conduct” means—

- 5 (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—
 - 10 (i) relating or purporting to relate to B or to any other person, or
 - (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),
- 15 (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,
- 20 (i) watching or spying on B or any other person, or
- (j) 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;

“course of conduct” involves conduct on two or more occasions;

25 “substantial distress” means distress that has a substantial adverse effect on B’s day to day activities.

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

- 30 (a) was authorised by virtue of any statutory provision or rule of law,
- (b) was engaged in for the purpose of preventing or detecting crime, or
- (c) was reasonable in the particular circumstances.

(6) A person who commits the offence of stalking is liable—

- 35 (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine (or both), or
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both).

(7) In proceedings in respect of a charge against a person of the offence of stalking, the person may be convicted of an offence under section 2 if the facts proved against the person—

- 40 (a) do not amount to the offence of stalking, but
- (b) do amount to the offence under section 2.

(8) Subsection (7) is without prejudice to section 6(2) of the Criminal Law Act (Northern Ireland) 1967 (alternative verdicts on trial on indictment).

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(9) In this section “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Offence of threatening or abusive behaviour

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

- 5 (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 causes fear or alarm.

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

(3) Subsection (1) applies to—

- (a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done, and
15 (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
20 years or a fine (or both), or
(b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both).

Special measures directions

25 3.—(1) The Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

(2) In Article 5(5) (offences where witnesses are eligible for assistance with giving evidence), after sub-paragraph (c) add—

“(d) an offence under section 1 of the Protection from Stalking Act (Northern Ireland) 2021.”.

30 (3) After Article 22A insert—

“Complainants in proceedings involving stalking

22B. No person charged with an offence under section 1 of the Protection from Stalking Act (Northern Ireland) 2021 may in any criminal proceedings cross-examine in person a witness who is the complainant,
35 either—

- (a) in connection with that offence, or
(b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.”.

(4) In Article 23 (protection of children from cross-examination by defendant in
40 person)—

- (a) in paragraph (3), after sub-paragraph (cd) insert—

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“(ce) an offence under section 1 of the Protection from Stalking Act (Northern Ireland) 2021;”;

(b) in paragraph (4)(a), for “or (cd)” substitute “, (cd) or (ce)”.

5 (5) In Article 24 (direction prohibiting defendant from cross-examining particular witnesses)—

(a) in paragraph (1), after “22A” insert “, 22B”;

(b) in paragraph (3)(e), after “22A”, in both places it occurs, insert “, 22B”.

(6) In Article 26(1) (defence representation for purposes of cross-examination), after “22A,” insert “22B,”.

10 (7) In Article 27(1) (warning to jury), after “22A,” insert “22B,”.

Alternative to conviction of the domestic abuse offence

4. In section 13(2) of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (alternatives to the domestic abuse offence), after paragraph (b) add—

15 “(c) an offence under section 1 of the Protection from Stalking Act (Northern Ireland) 2021 (offence of stalking),

(d) an offence under section 2 of that Act (offence of threatening or abusive behaviour).”.

No right to claim trial by jury

20 5. In Article 29(1) of the Magistrates’ Courts (Northern Ireland) Order 1981 (right to claim trial by jury for certain summary offences but not those listed in the sub-paragraphs), after sub-paragraph (q) add—

“(r) section 1 or 2 of the Protection from Stalking Act (Northern Ireland) 2021.”.

25 *Stalking protection orders*

Meaning of act associated with stalking and risk associated with stalking

6.—(1) This section applies for the purposes of this section and sections 7 to 10.

(2) An “act associated with stalking” is any of the following—

(a) following a person;

30 (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
35 electronic communication;

(e) entering any premises;

(f) loitering in any place (whether public or private);

(g) interfering with any property in the possession of a person;

40 (h) giving anything to a person or leaving anything where it may be found by, given to or brought to the attention of a person;

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- (i) watching or spying on a person;
- (j) acting in any other way that it would be reasonable to expect would cause a reasonable person to suffer fear, alarm or substantial distress.

(3) A “risk associated with stalking” is a risk of—

- 5 (a) a person carrying out acts associated with stalking, and
- (b) another person being a victim of those acts (if carried out).

(4) Where there is a risk associated with stalking, the person mentioned in subsection (3)(a) “poses a risk associated with stalking” to any person within subsection (3)(b).

10 (5) The acts mentioned in subsection (3) may be acts which the person mentioned in subsection (3)(a) knows, or ought to know, are unwelcome to a person within subsection (3)(b) even if, in other circumstances, the acts would appear harmless in themselves.

15 (6) A reference to being a victim of acts associated with stalking is a reference to being a target of the acts or to suffering physical or psychological harm because of, or otherwise being a victim of, the acts.

Applications for orders

7.—(1) A stalking protection order is an order which, for the purpose of preventing a person from carrying out acts associated with stalking—

- 20 (a) prohibits the person from doing anything described in the order, or
- (b) requires the person to do anything described in the order.

(2) The Chief Constable may apply to a court of summary jurisdiction for a stalking protection order against a person (“D”) if it appears to the Chief Constable that—

- 25 (a) D has carried out acts associated with stalking,
- (b) D poses a risk associated with stalking to another person, and
- (c) there is reasonable cause to believe the proposed order is necessary to protect another person from such a risk (whether or not the other person was a victim of the acts mentioned in paragraph (a)).

30 (3) The Chief Constable may apply for a stalking protection order only against a person—

- (a) who resides in Northern Ireland, or
- (b) who the Chief Constable believes is in, or is intending to come to, Northern Ireland.

35 (4) It does not matter—

- (a) whether the acts mentioned in subsection (2)(a) were carried out in a part of the United Kingdom or elsewhere, or
- (b) whether they were carried out before or after the coming into operation of this section.

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Power to make orders

8.—(1) This section applies where the Chief Constable has applied under section 7 to a court of summary jurisdiction for a stalking protection order against a person (“D”).

- 5 (2) The court may make the order if satisfied that—
- (a) D has carried out acts associated with stalking,
 - (b) D poses a risk associated with stalking to another person, and
 - (c) the proposed order is necessary to protect another person from such a risk (whether or not the other person was a victim of the acts mentioned in
- 10 paragraph (a)).

(3) The court may include a prohibition or requirement in the stalking protection order only if satisfied that the prohibition or requirement is necessary to protect the other person from a risk associated with stalking.

- 15 (4) Prohibitions or requirements must, so far as practicable, be such as to avoid—

- (a) conflict with D’s religious beliefs, and
- (b) interference with any times at which D normally works or attends an educational establishment.

20 (5) The court may not include any prohibition or requirement in the order which is incompatible with a prohibition or requirement in a stalking protection order to which D is already subject (whether made by that court or another).

(6) A prohibition or requirement, unless expressly limited to a particular locality, is to be complied with—

- (a) in all parts of the United Kingdom, and
- 25 (b) if D resides in Northern Ireland or was resident in Northern Ireland when the application for the order was made or is a UK national, also everywhere outside the United Kingdom.

(7) It does not matter—

- 30 (a) whether the acts mentioned in subsection (2)(a) were carried out in a part of the United Kingdom or elsewhere, or
- (b) whether they were carried out before or after the coming into operation of this section.

Duration of orders

35 9.—(1) A prohibition or requirement contained in a stalking protection order has effect—

- (a) for a fixed period, specified in the order, of at least 2 years beginning with the day on which the order is made, or
- (b) until further order.

(2) A stalking protection order—

- 40 (a) may specify that some of its prohibitions or requirements have effect until further order and some for a fixed period;
- (b) may specify different periods for different prohibitions or requirements.

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Variations, discharges and renewals

10.—(1) The Chief Constable or the person against whom a stalking protection order is made may apply to a court of summary jurisdiction for an order varying, renewing or discharging the stalking protection order.

5 (2) On the application, the court may make any order varying, renewing or discharging the stalking protection order that the court considers appropriate.

(3) But a court may not—

(a) in renewing or varying an order, impose an additional prohibition or requirement unless satisfied that it is necessary to do so in order to protect
10 a person from a risk associated with stalking;

(b) discharge an order before the end of 2 years beginning with the day on which the order was made without the consent of—

(i) the person against whom the order was made, and

(ii) the Chief Constable.

15 **Interim stalking protection orders**

11.—(1) An interim stalking protection order, in relation to a person, is an order which—

(a) prohibits the person from doing anything described in the order, or

(b) requires the person to do anything described in the order.

20 (2) Subsection (3) applies where an application for a stalking protection order against a person (“D”) has not been determined; and in the following provisions that application is referred to as the main application.

(3) A court of summary jurisdiction may, if it considers it appropriate to do so, make an interim stalking protection order against D on an application made by the
25 Chief Constable at the same time as the main application or later.

(4) Prohibitions or requirements included in the interim stalking protection order must, so far as practicable, be such as to avoid—

(a) conflict with D’s religious beliefs, and

(b) interference with any times at which D normally works or attends an
30 educational establishment.

(5) A prohibition or requirement included in the interim stalking protection order, unless expressly limited to a particular locality, is to be complied with—

(a) in all parts of the United Kingdom, and

(b) if D resides in Northern Ireland or was resident in Northern Ireland when
35 the main application was made or is a UK national, also everywhere outside the United Kingdom.

(6) The interim stalking protection order has effect only for a fixed period specified in the order, but this is subject to subsections (9) and (10).

40 (7) The Chief Constable or D may apply to a court of summary jurisdiction for an order varying, renewing or discharging the interim stalking protection order.

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(8) On an application under subsection (7), the court may make any order varying, renewing or discharging the interim stalking protection order that the court considers appropriate.

5 (9) The interim stalking protection order ceases to have effect, if it has not already done so, on the making of a stalking protection order on the main application or on the withdrawal of the main application.

(10) Where the interim stalking protection order is in force immediately before the dismissal of the main application, it ceases to have effect on the first occasion after the dismissal when the following conditions are satisfied—

- 10 (a) there is no pending appeal to the county court from the dismissal,
(b) the time for making such an appeal (taking account of any extension granted) has expired, and
(c) there is no pending application to extend the time for making such an appeal.

15 **Content of, and procedure for, orders**

12.—(1) A stalking protection order and an interim stalking protection order must specify—

- (a) the date on which the order is made,
20 (b) each prohibition or requirement that applies to the person against whom the order is made, and
(c) whether any prohibition or requirement is expressly limited to a particular locality and, if it is, what the locality is.

(2) Any application under section 7, 10 or 11 to a court of summary jurisdiction is to be made by complaint under Part 8 of the Magistrates' Courts (Northern Ireland) Order 1981.

(3) Article 78(1) of that Order (time limits) does not apply to a complaint by which any such application is made.

30 (4) An application under section 7 or 11(3) is to be heard by a youth court if, and only if, it is for an order against a person who is under the age of 18 when the application is made.

(5) An application under section 10 or 11(7) is to be heard by a youth court if, and only if, it is for variation, renewal or discharge of an order made against a person who is under the age of 18 when the application is made for the variation, renewal or discharge.

35 (6) Subsection (4) or (5) has effect despite the person attaining the age of 18 before the conclusion of the proceedings on the application.

(7) In this section “youth court” means a court of summary jurisdiction—

- (a) constituted in accordance with Schedule 2 to the Children and Young Persons Act (Northern Ireland) 1968, and
40 (b) known as a youth court by virtue of Article 27 of the Criminal Justice (Children) (Northern Ireland) Order 1998.

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Offence of breaching order

13.—(1) A person who, without reasonable excuse, breaches a stalking protection order or an interim stalking protection order commits an offence.

5 (2) If a provision of the order is to be complied with in all parts of the United Kingdom, subsection (1) applies to breaches of it anywhere in the United Kingdom; and if a provision of the order is also to be complied with everywhere outside the United Kingdom, subsection (1) also applies to breaches of it anywhere outside the United Kingdom.

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

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

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).

15 (4) Article 30(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (youth court's power to continue to deal with case, and defaults, after person attains 18) applies in relation to proceedings under this section for breach of an order as if they were not part of the proceedings in which the order was made, renewed or varied.

20 (5) In proceedings for an offence under this section, a copy of the original stalking protection order or interim stalking protection order, certified by the clerk of petty sessions or the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.

Notification requirements

25 14.—(1) A person subject to—

(a) a stalking protection order (other than one which replaces an interim stalking protection order), or

(b) an interim stalking protection order,

30 must, within the period of 3 days beginning with the date on which the order comes into force, notify to the police the information set out in subsection (2).

(2) The information is—

(a) the person's name and, where the person uses one or more other names, each of those names,

(b) the person's home address, and

35 (c) any other information prescribed by regulations made by the Department.

(3) A person who—

(a) is subject to a stalking protection order or an interim stalking protection order, and

(b) uses a name which has not been notified under this section,

40 must, before the end of the period of 3 days beginning with the date on which that happens, notify to the police that name.

(4) A person who—

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- (a) is subject to a stalking protection order or an interim stalking protection order, and
- (b) changes home address,
- 5 must, before the end of the period of 3 days beginning with the date on which that happens, notify to the police the new home address.
- (5) The requirements imposed by subsections (1) to (4) do not apply to a person who is subject to notification requirements under—
- (a) Part 2 of the Sexual Offences Act 2003,
- (b) Part 8 of the Justice (Northern Ireland) Act 2015, or
- 10 (c) Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.
- (6) Subsection (7) applies where—
- (a) a person is subject to a stalking protection order or an interim stalking protection order,
- 15 (b) at the time the order is made, the requirements imposed by this section do not apply to the person as a result of subsection (5),
- (c) the person ceases on a subsequent day (“the final day”) to be subject to the notification requirements mentioned in subsection (5), and
- (d) the order remains in effect on the final day.
- 20 (7) The requirements imposed by subsections (1) to (4) apply to the person as from the final day, but as if the reference in subsection (1) to the date on which the order comes into force were a reference to the final day.
- (8) In this section “home address”, in relation to a person, means—
- (a) the address of the person’s sole or main residence in Northern Ireland, or
- 25 (b) if the person has no residence in Northern Ireland, the address of the person’s sole or main residence in Great Britain, or
- (c) if the person has no residence in the United Kingdom, the address or location of a place in Northern Ireland where the person can regularly be found and, if there is more than one such place, such of those places as the person may select, or
- 30 (d) if the person has no residence in the United Kingdom, and there is no such place in Northern Ireland, the address or location of a place in Great Britain where the person can regularly be found and, if there is more than one such place, such of those places as the person may select.
- 35 (9) Regulations are not to be made under subsection (2)(c) unless a draft of them has been laid before, and approved by a resolution of, the Assembly.

Method of notification and related matters

- 15.—(1) A person gives a notification under section 14(1), (3) or (4) by—
- (a) attending at any police station in Northern Ireland prescribed by
- 40 regulations under section 87(1)(a) of the Sexual Offences Act 2003, and
- (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.

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(2) A notification given in accordance with this section must be acknowledged—

- (a) in writing, and
- (b) in such form as the Department may direct.

5 (3) When a person gives notification under section 14(1), (3) or (4), the person must, if requested to do so by the police officer or person mentioned in subsection (1), allow that officer or person to—

- (a) take the person's fingerprints,
- (b) photograph any part of the person, or
- 10 (c) do both of those things.

(4) The power in subsection (3) is exercisable for the purpose of verifying the identity of the person.

15 (5) Fingerprints taken from a person under this section (and any copies of those fingerprints) must be destroyed no later than the date on which the person ceases to be subject to a stalking protection order or, as the case may be, ceases to be subject to an interim stalking protection order that is not replaced by a stalking protection order.

20 (6) Photographs taken of any part of the offender under this section (and any copies of such photographs) must be destroyed no later than the date on which the person ceases to be subject to a stalking protection order or, as the case may be, ceases to be subject to an interim stalking protection order that is not replaced by a stalking protection order.

Offences relating to notification

16.—(1) A person commits an offence if the person—

- 25 (a) fails, without reasonable excuse, to comply with section 14(1), (3) or (4),
- (b) notifies to the police, in purported compliance with section 14(1), (3) or (4), any information which the person knows to be false, or
- (c) fails, without reasonable excuse, to comply with section 15(3).

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

- 30 (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both), or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).

35 (3) A person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with section 14(1), (3) or (4).

(4) The person continues to commit the offence throughout any period during which the failure continues.

40 (5) But the person may not be prosecuted more than once in respect of the same failure.

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Guidance

17.—(1) The Department must issue guidance to the Chief Constable about the exercise of the Chief Constable’s functions under the provisions of this Act relating to stalking protection orders or interim stalking protection orders.

5 (2) The Department may, from time to time, revise the guidance issued under subsection (1).

(3) The Department must arrange for any guidance issued or revised under this section to be published in such manner as the Department considers appropriate.

Interpretation, commencement and short title

10 **Interpretation**

18. In this Act—

“the Department” means the Department of Justice;

“interim stalking protection order” has the meaning given in section 11(1);

“stalking protection order” has the meaning given in section 7(1);

15 “UK national” means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject,
or

20 (c) a British protected person within the meaning of that Act.

Commencement

19.—(1) Sections 1 to 5, section 18, this section and section 20 come into operation on the day after the day on which this Act receives Royal Assent.

25 (2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) The Department may by order make such transitional, transitory or saving provision as the Department considers appropriate in connection with the coming into operation of any provision of this Act.

Short title

30 **20.** This Act may be cited as the Protection from Stalking Act (Northern Ireland) 2021.

Protection from Stalking Bill

[AS INTRODUCED]

A Bill to provide protection from stalking, and from threatening or abusive behaviour, and for related purposes.

Introduced by: Mrs Naomi Long, Minister of Justice

On: 18 January 2021

Bill Type: Executive Bill

ACCOMPANYING DOCUMENTS

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For more information please contact:

Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Telephone: 028 90 521137
Textphone: 028 90 521209

E-mail: info@niassembly.gov.uk

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