

Courts (Abuse of Process) Bill

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TO

Prevent abuse of process in the civil and family courts; to make provision about cooperation between court jurisdictions; to create offences when certain civil and family court orders are breached; to amend the rights and duties of certain parties to prevent abuse of process in civil and family court; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

PREVENTION OF ABUSE OF PROCESS

1 Abuse of process: definition

- (1) For the purpose of this Act, an “abuse of process” occurs when a victim of a specified offence is the subject of an application for legal proceedings in the civil or family courts, by the perpetrator of the specified offence, and such proceedings have been applied for in a way that may cause harm or distress to the victim. 5
- (2) For the purpose of subsection (1) specified offences include—
- (a) an offence under section 2 of the Protection from Harassment Act 1997 (offence of harassment); 10
 - (b) an offence under section 2A of the Protection from Harassment Act 1997 (offence of stalking);
 - (c) any offence that is committed in a setting of domestic violence;
 - (d) any other offence specified in regulations by the Secretary of State. 15
- (3) Regulations under this section are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

2 Review of cooperation of courts to prevent abuse of process

- (1) The Attorney General shall establish a review of cooperation between the criminal, civil and family courts.
- (2) The review must, in particular –
 - (a) consider how communication between those courts can be improved to prevent abuse of process where the same victim is involved in matters before more than one court of a different type, and
 - (b) make recommendations for greater cooperation between courts to prevent abuse of process.
- (3) The review shall have a legally qualified chair appointed by the Attorney General.
- (4) The chair of the review shall consult such organisations and representatives of victims as the chair considers relevant.
- (5) A report setting out the conclusions and recommendations of the review must be laid before Parliament within 12 months of this Act being passed.
- (6) The Attorney General must ensure that the review recommendations are implemented, so far as is reasonably practicable, within 6 months of the completion of the review.

3 Duties and rights of parties to court proceedings: information to prevent abuse of process

- (1) Parties to civil or family court proceedings must provide information to assist the court in determining whether such proceedings are an abuse of process.
- (2) A person (“the applicant”) that applies for proceedings in civil or family court must, within ten days of submitting the application, declare –
 - (a) criminal convictions in respect of offences specified under section 1(2);
 - (b) any current or past restraining order; and
 - (c) any current or past non-molestation order,
 in respect of a person (“the respondent”) against whom such proceedings have been applied for, or in respect of any other person (“P”) that may be a party to such proceedings where P was the victim of such a specified offence and the applicant was the perpetrator.
- (3) The applicant must, within ten days of submitting the application, declare any previous relevant applications for proceedings, in relation to –
 - (a) the respondent;
 - (b) P; or
 - (c) any other person that has been the victim of abuse of process and where the applicant was the perpetrator of such abuse of process,
 taken within the five years prior to the current application for proceedings.
- (4) For the purpose of subsection (3) “relevant applications for proceedings” means proceedings where a person under subsection (3)(a), (b) or (c) has been the victim of abuse of process and where the applicant was the perpetrator of such abuse of process.
- (5) A failure by the applicant to comply with subsections (2) or (3) may be deemed a contempt of court.

- (6) P and the respondent to any application for proceedings in a civil or family court shall have the right to inform that court of –
- (a) any matters of fact relating to the applicant that may assist the court in determining whether such proceedings are an abuse of process, and
 - (b) any similar applications made by the applicant in respect of other persons. 5
- (7) Where a civil or family court has received information under this section, that court shall have a duty to consider whether the continuation of such proceedings would be an abuse of process.
- 4 Respondent’s right to special measures 10**
- (1) Where the applicant –
- (a) has any convictions for an offence specified under section 1(2), in respect of the respondent, and
 - (b) has applied for proceedings in civil or family court in respect of the respondent, the respondent shall have the right to apply for special measures. 15
- (2) In this section special measures means the various measures that a court can take to assist vulnerable or intimidated witnesses to give their best evidence in court as set out under sections 16 to 30 of the Youth Justice and Criminal Evidence Act 1999, including – 20
- (a) live video links;
 - (b) video-recorded statements;
 - (c) screens around the witness box; and
 - (d) assistance with communication, including the use of an intermediary.
- (3) Where subsection (1) applies the respondent shall not be examined in court by the applicant. 25
- 5 Right of police officers to apply to be a party to relevant court proceedings**
- (1) A police officer shall have the right to apply to be a party to any civil or family court proceedings if –
- (a) the respondent or applicant has been involved in criminal proceedings, and
 - (b) the police officer considers the criminal proceedings to be of relevance to any such proceedings in civil or family court. 30
- (2) Where subsection (1) applies, a police officer may submit details of the relevant criminal proceedings to a civil or family court. 35
- 6 Training in abuse of process**
- The Secretary of State shall ensure that all criminal justice professionals undertake training on abuse of process, including training in –
- (a) recognising the signs of abuse of process,
 - (b) preventing abuse of process, 40
 - (c) the psychological impact of abuse of process on victims and their children, and
 - (d) the measures contained in this Act.

7 Guidance on duties under this Act

- (1) The Secretary of State must publish guidance about the exercise of duties by criminal justice professionals under this Act.
- (2) The Secretary of State may from time to time revise guidance published under this section and, if guidance is revised, the Secretary of State must publish the guidance as revised. 5

PART 2

OFFENCES AND BREACHES OF COURT ORDERS

8 Non-molestation orders

In section 42 of the Family Law Act 1996 (offence of breaching non-molestation order), after subsection (5), insert – 10

“(5A) If a person is found guilty of an offence, without reasonable excuse, under this section on more than two occasions in respect of the same victim there shall be a presumption of custody in respect of the second offence.” 15

9 Restraining orders

- (1) Section 5 of the Protection from Harassment Act 1997 (restraining orders on conviction) is amended as follows.

- (2) After subsection (2) insert –

“(2A) The order must, in particular, describe whether indirect contact with the victim by means of social media or any technical device shall be prohibited. 20

(2B) Where an order is made under this section, a court may –

- (a) on request from the victim, limit the defendant to owning two devices that are capable of accessing the internet, of which one may be a mobile device; 25
- (b) prohibit the defendant from conducting research into the victim without the leave of the court;
- (c) prohibit the defendant from applying for any proceedings in civil or family court without the leave of the court. 30

(2C) Any device under subsection (2B)(a) must be registered with a police force named by the court.”

- (3) After subsection (6) insert –

“(6A) If a person is found guilty of an offence, without reasonable excuse, under this section on two or more occasions in respect of the same victim there shall be a presumption of a custody in respect of the second offence.” 35

10 Offence of breaching child arrangement orders and other orders with respect to children

- (1) The Children Act 1989 is amended as follows. 40

- (2) After section 10 (power of court to make section 8 orders) insert –

“10A Breach of section 8 orders: compensation, warning order and offence

- (1) A person (“P”) who without reasonable excuse does anything that the person is prohibited from doing by a section 8 order is –
- (a) on the first occasion this occurs in respect of a particular section 8 order, issued with a warning order by the court; 5
 - (b) on any future occasion on which this occurs in respect of a particular section 8 order, guilty of an offence.
- (2) Where subsection (1) applies and P has as a result caused financial loss to another person (“R”), the court may require P to pay compensation to R up to the amount of the loss that was caused. 10
- (3) A warning order issued under this section must inform P that further breaches may result in P being charged with an offence.
- (4) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court. 15
- (5) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.
- (6) A person guilty of an offence under this section is liable on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine, or to both.” 20

PART 3

GENERAL AND FINAL PROVISIONS

11 Annual reports

- (1) The Secretary of State shall, 12 months after this Act receives Royal Assent and once in every 12 month period thereafter, lay before Parliament an annual report on the implementation of this Act. 25
- (2) A report under this section must, in particular, include –
- (a) the number of applications for proceedings that represent an abuse of process, including the number of occasions where either –
 - (i) an exchange of information between courts took place, 30
 - (ii) an applicant provided information as under sections 3(2) and 3(3), or
 - (iii) P or the respondent provided information as under section 3(6);
 - (b) the number of breaches of orders under this Act; and
 - (c) the number of staff trained in abuse of process. 35

12 Interpretation

In this Act –

- “abuse of process” has the meaning given by section 1;
- “community support officer” means a person designated by the chief officer of police of a police force as a community support officer under section 38 of the Police Reform Act 2002 (police powers for police authority employees); 40

“criminal justice professionals” means police officers, judges, magistrates and any other persons for whom the Secretary of State considers it appropriate to provide training or guidance;	
“domestic violence” means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other;	5
“police force” means any of the following—	
(a) any police force maintained under section 2 of the Police Act 1996;	10
(b) the Metropolitan police force;	
(c) the City of London police force;	
(d) the British Transport police force;	
“police officer” means a member of a police force or a community support officer;	15
“special measures” has the meaning given by section 4(2);	
“the applicant”, in relation to court proceedings, is to be construed in accordance with section 3;	
“the respondent”, in relation to court proceedings, is to be construed in accordance with section 3.	20

13 Extent, commencement and short title

- (1) This Act extends to England and Wales.
- (2) Sections 1, 2, 12 and this section come into force on the day on which this Act is passed.
- (3) The remaining provisions of this Act shall come into force on such a day as the Secretary of State may by statutory instrument appoint and different days may be appointed for different provisions or for different purposes. 25
- (4) This Act may be cited as the Courts (Abuse of Process) Act 2018.

Courts (Abuse of Process) Bill

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To prevent abuse of process in the civil and family courts; to make provision about cooperation between court jurisdictions; to create offences when certain civil and family court orders are breached; to amend the rights and duties of certain parties to prevent abuse of process in civil and family court; and for connected purposes.

*Ordered to be brought in by Liz Saville Roberts,
Jess Phillips,
Tracy Brabin,
Dr Sarah Wollaston,
Tim Loughton,
Alex Norris,
Mr Alistair Carmichael,
Alison Thewliss,
Ben Lake,
Jim Shannon,
Caroline Lucas,
and Peter Kyle.*

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