

Protection of Freedoms Bill

COMMONS REASON AND AMENDMENTS

[The page and line references are to HL Bill 99, the bill as first printed for the Lords.]

Clause 40

16 Page 33, line 33, at end insert—

“(3) A further safeguard shall be that, unless explicitly provided for in the statute providing for the power of entry, all powers of entry shall be exercised by agreement with the premises occupier or by warrant.”

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendments Nos. 16, 17 and 18 for the Reason set out at 18A

17 Page 33, line 33, at end insert—

“(4) A further safeguard shall be that, notwithstanding the statute providing for the power of entry, a power of entry may only be used without warrant, or without agreement with the occupier of the premises to be entered, in cases where the authority using the power can demonstrate that the aim of the use of the power would be frustrated if a warrant or agreement were sought.”

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendments Nos. 16, 17 and 18 for the Reason set out at 18A

18 Page 33, line 33, at end insert—

“(5) The safeguards set out in subsections (3) and (4) above shall not apply in any case where the authority exercising the power of entry is—
(a) a Trading Standards Officer acting under any legislation which permits the Officer to exercise such a power;

- (b) a Constable or a member of the Security Service acting under any legislation which permits such a person to exercise such a power; or
- (c) doing so in pursuance of the protection of a child or a vulnerable adult.”

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendments Nos. 16, 17 and 18 for the following Reason –

- 18A** *Because the Commons consider that the imposition of general restrictions of this nature on the exercise of powers of entry could undermine actions to protect public safety.*

Before Clause 107

- 51** Insert the following new Clause –

“Stalking

Offences in relation to stalking

- (1) After section 2 of the Protection from Harassment Act 1997 (offence of harassment) insert –

“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.

(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.”

(2) After section 4 of that Act (putting people in fear of violence) insert—

40 **“4A Stalking involving fear of violence**

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

(a) amounts to stalking, and

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

46 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.

(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.

51

(3) 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.

(4) 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.

(5) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (4)(b) to twelve months is to be read as a reference to six months.

(6) 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.

- (7) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (6) convicted before it of an offence under section 2 or 2A as a magistrates' court would have on convicting the person of the offence.
- (8) This section is without prejudice to the generality of section 4.”

COMMONS AGREEMENT WITH AMENDMENTS

The Commons agree to this Amendment with the following Amendments –

- 51A** Line 40, at end insert “or serious alarm or distress”
- 51B** Line 43, after “(b)” insert “either –
(i) ”
- 51C** Line 44, at end insert “or
(ii) causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities,”
- 51D** Line 46, at end insert “or (as the case may be) will cause such alarm or distress”
- 51E** Line 51, at end insert –
“(2A) 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.”

Schedule 9

- 133** Page 184, line 25, at end insert –

“PART 9B

STALKING

Protection from Harassment Act 1997

- 141A(1) The Protection from Harassment Act 1997 is amended as follows.
- (2) In section 1(2) (circumstances in which a person ought to know that a course of conduct amounts to harassment) after “this section” insert “or section 2A(2)(c)”.
- (3) In section 4 (putting people in fear of violence) –
(a) in subsection (5) after “section 2” insert “or 2A”, and
(b) in subsection (6) after “section 2” insert “or 2A”.

Crime and Disorder Act 1998

- 141B(1) Section 32 of the Crime and Disorder Act 1998 (racially or religiously aggravated harassment etc.) is amended as follows.
- (2) In subsection (1) –

- (a) in paragraph (a) –
 - (i) after “section 2” insert “or 2A”, and
 - (ii) for “offence of harassment” substitute “offences of harassment and stalking”, and
 - (b) in paragraph (b) –
 - (i) after “section 4” insert “or 4A”, and
 - (ii) after “violence” insert “by stalking or otherwise”.
- 22
- (3) In subsection (5) for “the basic offence” substitute “either basic offence”.

Criminal Justice and Police Act 2001

- 141C In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (powers of seizure to which section 50 of that Act applies), after paragraph 63, insert –

“Protection from Harassment Act 1997

- 63A The power of seizure conferred by section 2B(2) of the Protection from Harassment Act 1997 (seizure of material relevant to stalking).”

Sexual Offences Act 2003

- 141D In Schedule 5 to the Sexual Offences Act 2003 (relevant offences for the purposes of notification and orders) –
- (a) in paragraph 56A –
 - (i) after “section 2” insert “or 2A”, and
 - (ii) for “offence of harassment” substitute “offences of harassment and stalking”, and
 - (b) in paragraph 57 –
 - (i) after “section 4” insert “or 4A”, and
 - (ii) after “violence” insert “by stalking or otherwise”.
- 41

Criminal Justice Act 2003

- 141E In Part 1 of Schedule 15 to the Criminal Justice Act 2003 (sentencing of dangerous offenders: specified violent offences), in paragraph 57 –
- (a) after “section 4” insert “or 4A”, and
 - (b) after “violence” insert “by stalking or otherwise”.
- 46

COMMONS AGREEMENT WITH AMENDMENTS

The Commons agree to this Amendment with the following Amendments –

- 133A** Line 22, leave out “by stalking or otherwise” and insert “and stalking involving fear of violence or serious alarm or distress”
- 133B** Line 41, leave out “by stalking or otherwise” and insert “and stalking involving fear of violence or serious alarm or distress”
- 133C** Line 46, leave out “by stalking or otherwise” and insert “and stalking involving fear of violence or serious alarm or distress”

