

DELEGATED POWERS AND REGULATORY REFORM COMMITTEE
STALKING PROTECTION BILL

MEMORANDUM FROM THE HOME OFFICE

Introduction

1. This memorandum identifies the provisions of the Stalking Protection Bill that confer delegated powers. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

Background and summary of the Bill

Background

2. This is a Private Member's Bill, introduced by Baroness Bertin, to make provision for orders to protect persons from the risks associated with stalking.

Summary

3. The Bill will allow the courts in England and Wales to make a stalking protection order (SPO) in certain prescribed circumstances. It will be a civil order, available on complaint by the police to a magistrates' court, and breach of the order will be a criminal offence. The order is intended to enhance protections for victims of stalking by ensuring a protective measure is available to enable intervention at the earliest possible stage. An order can contain prohibitions or requirements.
4. A court can only impose an order where it is satisfied that the person in respect of whom the order is sought has carried out acts associated with stalking, that the person poses a risk associated with stalking towards another person and that the proposed order is necessary to protect another person from a risk associated with stalking. That other person does not need to have been a direct victim of the acts associated with stalking which have taken place before an order can be made. The police have to apply a similar test before they can make an application. There is no requirement to prove that an offence of stalking has been committed before the court can make an order.
5. The orders have effect either for a specified period or until a further order (and may be indefinite). Where a period is specified it must be for a minimum of two years. The Bill also makes provision for an interim order which may be imposed pending a decision on whether a full order should be made.
6. The person against whom an order or interim order is made must, within three days of being served with the order, notify the police of their name or names, and address.
7. The application for an order will be made in the first instance to a magistrates' court with provision being made for appeals to the Crown Court.

Clause 10(4)(b) Power to direct the form of acknowledgement of a notification under the Act

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| Power conferred on: | Secretary of State |
| Power exercisable by: | Direction |
| Parliamentary procedure: | None |

Purpose of the power

8. Clause 9 requires a person in respect of whom a magistrates' court makes a stalking protection order (other than one which replaces an interim stalking protection order) within three days of being served with the order, to notify the police of their name or names, and address. There are similar requirements where the person uses a name which has not previously been notified or changes address.
9. Clause 10 sets out the process for notification including an acknowledgment that notification has taken place. Clause 10(4)(a) provides for the notification to be in writing and 10(4)(b) for it to be 'in such form as the Secretary of State may direct'.
10. Similar provisions appear in section 87 of the Sexual Offences Act 2003 (the 2003 Act) in relation to the notification requirements under Part 2 of that Act and in section 50 of the Counter-Terrorism Act 2008 (the 2008 Act) in relation to the notification requirements under part 4 of that Act.

Justification for the delegated power

11. The notification requirement, including the information that must be provided by a person subject to a SPO, is provided for on the face of the Bill, as is the requirement to acknowledge a notification in writing. The acknowledgement provides protection to the person notifying and it is appropriate for the notification to be in a standard format, recording specified information. The form of the acknowledgement is an administrative process and, as such, may sensibly be left to be determined by a direction of the Secretary of State.

Justification for the procedure

12. Given the purely administrative nature of such directions, it is not considered necessary to make them subject to any parliamentary procedure; this is consistent with the equivalent provisions in the 2003 Act and 2008 Act.

Clause 12: Requirement to issue and publish guidance, and a power to revise guidance, to chief officers of police about the exercise of their functions under the Act

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| Power conferred on: | Secretary of State |
| Power exercisable by: | Guidance |
| Parliamentary procedure: | None |

Purpose of the power

13. The Act places the onus on the chief officer of police to apply for stalking protection orders; it also requires notification to the police and sets out the method of notification. The guidance will advise chief officers of police on the exercise of these and other functions under the Act.
14. The power provides for the guidance to be revised if appropriate and also for it to be published, ensuring that it is both current and transparent.

Justification for the delegation of power

15. The purpose of guidance is to aid policy implementation by supplementing legal rules. There is a vast range of statutory guidance issued each year and it is important that guidance can be updated rapidly to keep pace with events. There is nothing to prevent Parliament from scrutinising guidance at any time.
16. The requirement for the guidance to be published in such manner as the Secretary of State sees fit will ensure that it remains accessible to those who need to refer to it.

Justification for the procedure

17. Such guidance is not subject to any parliamentary procedure on the grounds that it will be prepared in consultation with practitioners, it will not conflict with the statutory framework in the Bill and chief officers will not be under a statutory duty to have regard to it. This approach is consistent with similar guidance, for example, that provided for in sections 103J(1) and 122J(1) of the 2003 Act in respect of sexual harm prevention orders and sexual risk orders.

Clause 15(3): Commencement power

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| <i>Power conferred on:</i> | <i>Secretary of State</i> |
| <i>Power exercisable by:</i> | <i>Regulations made by statutory instrument</i> |
| <i>Parliamentary procedure:</i> | <i>None</i> |

Purpose of power

18. Clause 15(3) contains a standard power for the Secretary of State to bring provisions of the Bill into force by commencement regulations.

Justification for the power

19. Leaving provisions in the Bill to be brought into force by regulations will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time, having regard to the need to make any necessary secondary legislation, issue guidance, undertake appropriate training and put the necessary systems and procedures in place, as the case may be.

Justification for the procedure

20. As usual with commencement powers, regulations made under clause 15(3) are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

Home Office
11 January 2019