

STALKING PROTECTION BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Stalking Protection Bill as brought from the House of Commons on 26 November 2018 (HL Bill 145).

- These Explanatory Notes have been provided by the Home Office, with the consent of Baroness Bertin, the Peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The purpose of this Bill is to create a new civil stalking protection order to protect members of the public from risks associated with stalking.
- 2 The new order will:
 - be available on application from the police to a magistrates' court;
 - enable the imposition of both prohibitions and requirements on the perpetrator; and
 - have a criminal penalty for breach.
- 3 The new order is designed for use particularly in cases where existing interventions are not always applicable, namely when:
 - the stalking occurs outside of a domestic abuse context, or where the perpetrator is not a current or former intimate partner of the victim (so called 'stranger stalking'); or
 - the criminal threshold has not, or has not yet, been met (such as while a criminal case is being built), or the victim does not support a prosecution.
- 4 The intention of this Bill is to provide the police with an additional tool with which to protect victims of stalking and to fill a gap within the existing protective order regime.

Policy background

- 5 From 5 December 2015 – 29 February 2016 the Government ran a public consultation to explore whether it would be beneficial to introduce a new civil order to protect victims of stalking.
- 6 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 breach of an order.¹
- 7 In particular, responses to the consultation highlighted a gap in the existing protective order regime and the need for earlier intervention in stalking cases, in order to protect victims and to address emerging patterns of behaviour in perpetrators before they become entrenched or escalate in severity.
- 8 69% of consultation respondents did not believe that existing protective orders provide sufficient protection to victims of 'stranger stalking', as they apply to a domestic abuse context and require that a relationship has existed or still exists.

¹ The consultation document is published online at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482417/Introducing_a_Stalking_Protective_Order_-_a_consultation.pdf

- 9 In its response to the public consultation published in December 2016, the Government committed to legislate to introduce a new civil stalking protection order as soon as Parliamentary time allowed.²

Legal background

- 10 In 2012 the Protection from Harassment Act 1997 (“the 1997 Act”) was amended by the Protection of Freedoms Act 2012 to introduce two new stalking offences.
- 11 The offence of stalking under section 2A of the 1997 Act is a summary offence (triable in a magistrates’ court) punishable by imprisonment for a term not exceeding six months, or a fine, or both.
- 12 The offence of stalking involving fear of violence or serious alarm and distress under section 4A of the 1997 Act is an either way offence (triable in either a magistrates’ court or the Crown Court) which carries a maximum penalty of ten years’ imprisonment.
- 13 In 2017 section 4A was amended by the Policing and Crime Act 2017 to increase the maximum penalty from five years’ to ten years’ imprisonment.
- 14 The 1997 Act does not define stalking, but provides a (non-exhaustive) list of examples of “acts or omissions associated with stalking”. These are:
- 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.³
- 15 Similarly, this Bill does not define stalking. However Clause 1 of the Bill signposts readers to section 2A of the 1997 Act for examples of acts associated with stalking.

² A summary of responses to the consultation and the Government’s response is published online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575278/Stalking_Order_Consultation_Response_-_Final_to_Publish.pdf

³ Protection from Harassment Act 1997, section 2A(3)

Territorial extent and application

- 16 Clause 15(1) sets out the territorial extent of the Bill, that is the jurisdiction in which the Bill applies. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 17 The provisions in this Bill extend and apply to England and Wales only.
- 18 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.
- 19 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

Commentary on provisions of Bill

Clause 1: Applications for orders

- 20 Subsection (1) sets out who may apply for an order, what a stalking protection Order is, and the grounds on which an application for an order may be made.
- 21 The order will be available on application to a magistrates' court by a chief officer of police.
- 22 As stipulated in subsection (3), a chief officer of police for a police area in England and Wales may make an application only in respect of someone who resides in their police area, or who they believe is in that area or is intending to come to it. This provision excludes the chief constables of the British Transport Police and of the Ministry of Defence Police, who may apply for an order but do not have a territorial police area.
- 23 For the purposes of making an application, the chief officer of police must be satisfied that the defendant has carried out acts associated with stalking; that they pose a risk of stalking to another person (as defined in subsection (4)); and that the order is necessary in order to protect the other person from that risk.
- 24 Subsection (1)(c) provides that the individual to be protected by the order does not have to have been the victim of the acts associated with stalking which provide the grounds for the application. This scenario could arise if a perpetrator is stalking other people connected to that individual (such as family members, friends, or co-workers), knowing that this behaviour will impact on the individual who is the principle subject of the stalking acts. This is known as 'stalking by proxy'.
- 25 Subsection (2) sets out what a stalking protection order is: a preventative order which can impose both prohibitions and requirements on the defendant as are necessary for the purpose of preventing them from carrying out acts associated with stalking.
- 26 An order can prohibit the defendant from doing something, as far as is necessary, to protect the other person from risk of stalking, and could include prohibiting the defendant from:
 - entering certain locations or defined areas where the victim resides or frequently visits;

- contacting the victim by any means, including via telephone, post, email, SMS text message or social media;
 - physically approaching the victim, at all or to within a specified distance.
- 27 An order can also require the defendant to do something, as far as is necessary, to protect the other person from risk of stalking. Positive requirements described in the terms of the order could include requiring the defendant to:
- attend a perpetrator intervention programme;
 - attend a mental health assessment;
 - participate in a restorative justice process.
- 28 Subsection (5)(a) provides that the acts associated with stalking which provide the grounds for an application can have been carried out in any part of the United Kingdom, or abroad. This does not affect the territorial extent of the Bill, which would form part of the law of England and Wales only.
- 29 Subsection (5)(b) provides that the acts associated with stalking which provide the grounds for an application for an order can have been carried before or after the time at which the provisions of this Bill come into force.
- 30 This Bill does not define stalking. However, subsection (4) sets out what may characterise a risk associated with stalking and subsection (6) signposts readers to section 2A of the 1997 Act for examples of acts associated with stalking. The 1997 Act similarly does not define stalking, but provides a (non-exhaustive) list of examples of “acts or omissions associated with stalking” – see paragraph 14 above.

Clause 2: Power to make orders

- 31 This clause sets out the powers of the magistrates’ court to make a stalking protection order, the grounds on which the court may make an order and what may be included in the terms of an order.
- 32 Subsection (1) requires that a magistrates’ court must be satisfied that the defendant has carried out acts associated with stalking; that they pose a risk of stalking to another person; and that each of the prohibitions and requirements included within the terms of the order is necessary in order to protect the other person from that risk.
- 33 Subsection (3) provides that any prohibitions or requirements included within the terms of the order (if deemed necessary as defined in subsection (2)) must, so far as is practicable, avoid conflict with the defendant’s religious beliefs, or their work or educational obligations. The intention of this subsection is to ensure that the terms of the order are proportionate.
- 34 Subsection (4) provides that the defendant must comply with a prohibition or requirement in all parts of the United Kingdom, unless it is expressly limited to a particular locality.
- 35 Subsection (5) reiterates the provisions of Clause 1(5) with respect to locations or times at which acts which provide the grounds for an order may have been carried out.
- 36 Subsections (6) and (7) apply when an order is being made in relation to a defendant who is already the subject of another stalking protection order. This scenario could arise, for example, in the case of a serial stalker who is stalking multiple victims. Subsection (7) provides that the terms of the different orders must not contradict each other. For example, the new order cannot require the defendant to attend a perpetrator intervention programme at a location which the earlier order prohibits them from entering.
- 37 The making of, or the refusal to make, an order under this clause can be appealed to the Crown Court. The appeals process is set out at Clause 7.

Clause 3: Duration of orders

- 38 This clause sets out the period of time for which an order has effect.
- 39 Subsection (1) provides that an order has effect for a fixed period specified within the terms of the order, or until a further order is made. A further order could be a variation or renewal of this same order, or a different stalking protection order.
- 40 Subsection (2) provides that, where a fixed period is specified for the duration of the order, this must be for at least two years beginning on the day on which the order is made.
- 41 Subsection (3) provides that different time periods may be specified in relation to different prohibitions or requirements included in the terms of the order, as is necessary to protect the other person from risk of stalking.

Clause 4: Variations, renewals and discharges

- 42 This clause sets out how a stalking protection order may be varied, renewed or discharged and who may apply for these measures.
- 43 An order may be varied, renewed or discharged on application to a magistrates' court by either the defendant who is subject to the order, or a relevant chief officer of police. The phrase 'relevant chief officer of police' is defined at Clause 14(1).
- 44 Before making a decision to vary, renew or discharge an order, the court must hear from the defendant and any relevant chief officer of police who wants to be heard.
- 45 The making of, or the refusal to make, an order under this clause can be appealed to the Crown Court. The appeals process is set out at Clause 7.

Variations

- 46 Subsection (4)(a) sets out that the court may not impose additional prohibitions or requirements on the defendant unless they are necessary in order to protect a person from the risk of stalking.
- 47 A scenario in which the police or the defendant may apply to vary an order is if the person being protected moves house or gets a new job and therefore the terms of the order need to be amended in order to reflect the new locations or defined areas which the defendant is prohibited from entering. Another scenario could be if the defendant's stalking behaviour changes and it becomes necessary to amend the terms of the order to continue to protect the victim from harm.

Renewals

- 48 A scenario in which the police may apply to renew an order is if the duration of the order is about to expire and they are satisfied that the renewal of the order is necessary to continue protect the victim from risk of stalking.

Discharges

- 49 A scenario in which the police or the defendant may apply to discharge an order before it expires if they are satisfied that the order is no longer necessary to protect the victim from risk of stalking.
- 50 Subsection (4)(b) sets out that the court may not discharge an order before the end of two years from the day on which the order was made⁴ without the consent of the defendant and

⁴ Where a fixed period is specified for the duration of an order, this must be for at least two years beginning on the day on which the order is made, as set out at Clause 3(2).

the appropriate chief officer of police. Which chief officer of police is required to give consent depends on which party made the application for the order to be discharged, which chief officer of police had applied for the order and, if the order was applied for by the chief officer of the British Transport Police or the chief officer of the Ministry of Defence Police and the defendant lives in England and Wales, the chief officer of police in the area in which the defendant lives.

- 51 A scenario in which the defendant may not consent for the order to be discharged is if they still consider themselves to pose a risk of stalking to the other person.

Clause 5: Interim stalking protection orders

- 52 This clause sets out the powers of a magistrates' court to make an interim stalking protection order, who may apply for an interim order, what may be included in the terms of an interim order and the duration of an interim order.
- 53 The purpose of this provision is to protect the victim whilst the application for the stalking protection order under Clause 1 is being determined.
- 54 Subsection (2) provides that interim stalking protection orders will be available on application to a magistrates' court by a chief officer of police, either at the same time as that officer makes the "main" application for an order under Clause 1, or in a separate application if the "main" application has already been made.
- 55 Subsection (3) provides that interim orders can prohibit the defendant from doing something, or require the defendant to do something, as the court deems appropriate. See paragraphs 27 and 28 above for examples of prohibitions and requirements which could be included in the terms of an interim order.
- 56 Subsection (4) provides that the prohibitions and requirements included within the terms of an interim order must, so far as is practicable, avoid conflict with the defendant's religious beliefs, or their work or educational obligations. The intention of this subsection is to ensure that the terms of the interim order are proportionate.
- 57 Subsection (5) provides that the defendant must comply with a prohibition or requirement in all parts of the United Kingdom, unless it is expressly limited to a particular locality.
- 58 Subsection (6) sets out the duration of an interim order. Interim orders have effect only for a fixed period specified in the order and cease to have effect on determination of the "main" application under Clause 1.
- 59 Subsection (7) provides that the defendant may apply to a magistrates' court for that order to be varied, renewed or discharged. The process for varying, renewing or discharging orders is set out at Clause 4.

Clause 6: Content of orders

- 60 This clause sets out what details must be specified within the terms of an order or an interim order.

Clause 7: Appeals

- 61 This clause sets out who may appeal to the Crown Court against the making of, or the refusal to make, an order or an interim order. This includes appeals against the variation, renewal or discharge of orders or interim orders, or the refusal to do so, under Clause 4.
- 62 Subsection (4) gives the Crown Court powers to make an order or orders to give effect to its determination of an appeal, as appears to it to be appropriate.

Clause 8: Offence of breaching stalking protection order etc

- 63 This clause provides that it is a criminal offence to breach the terms of an order or an interim order without reasonable excuse. It will be for a court to decide what constitutes a reasonable excuse in a particular case.
- 64 Subsection (2) sets out that breach of an order or an interim order is an either way offence, meaning that it can be tried in either a magistrates' court or a Crown Court depending on the seriousness of the offence. The penalty for breach on conviction by a magistrates' court ('summary conviction') is imprisonment for a term not exceeding 12 months, or a fine, or both. The penalty for breach on conviction by a Crown Court ('conviction on indictment') is imprisonment for a maximum term of five years, or a fine, or both.
- 65 Subsection (4) provides that conditional discharge is not available to the courts on conviction for breach of an order or an interim order. A conditional discharge is where the court decides not to impose a punishment on the offender unless they go on to commit another crime, at which point they can be sentenced for both the earlier offence and the new one.

Clause 9: Notification requirements

- 66 This clause requires a defendant subject to an order or an interim order to provide certain personal details to the police before the end of three days beginning with the date of service of the order.
- 67 Subsections (2) to (4) set out what personal information the defendant is required to provide to the police, and what to do if any of this personal information changes.
- 68 Subsection (5) provides that the notification requirements set out in this clause do not apply to the defendant if they are already subject to notification requirements under Part 2 of the Sexual Offences Act 2003, which is commonly referred to as being on the 'sex offenders' register'. This means that the defendant cannot be subject to both sets of notification requirements at the same time.
- 69 Subsection (6) sets out what happens when a relevant defendant transitions between the notification requirements under Part 2 of the Sexual Offences Act 2003 (the 'sex offenders' register') and the notification requirements under this Bill. In these circumstances, the defendant must notify within three days of the final day that they are subject to notification requirements under Part 2 of the Sexual Offences Act 2003. This ensures that there is no gap between the two sets of notification requirements.

Clause 10: Method of notification and related matters

- 70 This clause sets out where and how a defendant must notify the police depending on where their home address is situated, how notification must be acknowledged, and the police powers to verify the identity of the defendant when they attend at a police station to notify.
- 71 If the defendant has a home address in England or Wales, then they must attend at a police station in their local police area to notify. The phrase 'local police area' is defined at Clause 14(1) of the Bill.
- 72 If the defendant does not have a home address in England or Wales, then they must attend at a police station in the local police area in which the magistrates' court is situated which last made an order or interim order in respect of them. This will be a police station in England or Wales. A scenario in which this provision may apply is if a defendant subject to an order or an interim order subsequently moves to, or moves between, Scotland and Northern Ireland.
- 73 Subsection (3) sets out, if the defendant's home address changes, which home address they

must provide when notifying depending on whether this takes place before or after the change of address.

- 74 Subsection (4) provides that a notification must be acknowledged in writing and in such form as the Secretary of State may direct.

Clause 11: Offences relating to notification

- 75 This clause provides that it is a criminal offence to fail to comply with the notification requirements without reasonable excuse or knowingly to provide the police with false information. It will be for a court to decide what constitutes a reasonable excuse in a particular case.
- 76 This is an either way offence, meaning that it can be heard in either a magistrates' court or the Crown Court depending on the seriousness of the offence. The penalty for breach on conviction by a magistrates' court ('summary conviction') is imprisonment for a term not exceeding 12 months, or a fine, or both. The penalty for breach on conviction by a Crown Court ('conviction on indictment') is imprisonment for a maximum term of five years, or a fine, or both.

Clause 12: Guidance

- 77 This section requires the Secretary of State to issue and publish guidance to the police about the exercise of their functions under this Bill.
- 78 Topics which may be covered in such statutory guidance include:
- An overview of what stalking is, what stalking behaviour looks like, and how it differs from harassment;
 - Examples of circumstances in which the police may wish to consider applying for an order, such as while a criminal case is being built;
 - Examples of circumstances in which the police may wish to consider prosecution under stalking offences instead of applying for an order;
 - Examples of prohibitions and requirements which courts may wish to consider for inclusion in the terms of the order, and guidance on how to tailor a bespoke intervention in order to effectively address stalking behaviour and protect the victim;
 - Examples of circumstances in which the court may wish to seek expert advice on what prohibitions and requirements would be most appropriate and effective, such as from a healthcare practitioner, and how to ensure that prohibitions and requirements are proportionate;
 - Guidance on how the order operates in the context of other relevant legislation, such as on effective management of the defendant in cases where a registered sex offender is made subject to a stalking protection order;
 - Guidance on effective management of the defendant if they frequently move between different local police areas;
 - Guidance on how the police can make best use of existing police systems and databases in order to effectively risk manage the defendant, including examples

of circumstances in which the police may wish to consider creating a ViSOR⁵ record for a defendant subject to a stalking protection order, and/or identifying them as a Potentially Dangerous Person;⁶

- Guidance on potential vexatious use of the orders and how to address this appropriately;
- Guidance on an effective and timely response to breach of a stalking protection order.

Clause 13: Procedure

- 79 This clause sets out some procedural details on the operation of the Bill in the magistrates' courts.
- 80 Subsection (1) provides that an application to a magistrates' court under any provision in the Bill is to be made by complaint. This is the process by which civil matters are commenced in the magistrates' court.
- 81 Subsection (2) provides that section 127 of the Magistrates' Courts Act 1980 (time limits) does not apply to any provision in the Bill. This means that there is no requirement for a magistrates' court to hear proceedings for an order within six months from the time when the acts associated with stalking were carried out.

Clause 14: Interpretation

- 82 This clause defines various words and phrases used within the Bill.

Clause 15: Extent, commencement and short title

- 83 This clause sets out the territorial extent of the Bill, how and when the provisions will come into force and the short title of the Bill.

Commencement

- 84 The substantive provisions in this Bill will be brought into force by means of commencement regulations made by the Secretary of State.

Financial implications of the Bill

- 85 The Impact Assessment undertaken by the Home Office on the introduction of stalking protection orders found that the provisions in the Bill would not create any additional public expenditure or require any changes to public service manpower.⁷

⁵ The Dangerous Persons Database, commonly referred to as 'ViSOR', is a UK-wide secure database used to store and share information and intelligence on specific sexual and violent offenders who are deemed to pose a risk of serious harm to the public.

⁶ A Potentially Dangerous Person (PDP) is a person who is not currently managed under the statutory Multi-Agency Public Protection Arrangements (MAPPA), but whose behaviour gives reasonable grounds for believing that there is a likelihood of them committing an offence that will cause serious harm.

⁷ The Impact Assessment undertaken by the Home Office on the introduction of Stalking Protection Orders is published online at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575603/Stalking_Impact_Assessment.pdf

Parliamentary approval for financial costs or for charges imposed

86 This Bill does not require a money resolution.

Compatibility with the European Convention on Human Rights

87 The Bill is considered to be compatible with the European Convention on Human Rights.

88 The Bill confers powers which will need to be exercised compatibly with the Convention. Topics which may be covered in statutory guidance issued under Clause 12 include how to ensure that prohibitions and requirements are proportionate.

89 The Bill provides not only protections for victims of stalking, but also safeguards for defendants subject to an order or interim order. For example, Clauses 2(3)(a) and 5(4)(a) provide that prohibitions or requirements imposed on the defendant must, so far as practicable, be such as to avoid conflict with the defendant's religious beliefs or interference with any times at which they normally attend an educational establishment.

Related documents

90 The following documents are relevant to the Bill and can be read at the stated locations:

- Impact Assessment on the introduction of Stalking Protection Orders:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575603/Stalking_Impact_Assessment.pdf
- Consultation document: 'Introducing a Stalking Protection Order – a consultation':
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482417/Introducing_a_Stalking_Protection_Order_-_a_consultation.pdf
- Summary of responses to the consultation, including the Government's response:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575278/Stalking_Order_Consultation_Response_-_Final_to_Publish.pdf

Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Clauses 1 - 15	Yes	Yes	No	No	No

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