



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 2

### CRIMINAL LAW

#### *Stalking*

#### **39 Offence of stalking**

- (1) A person (“A”) commits an offence, to be known as the offence of stalking, where A stalks another person (“B”).
- (2) For the purposes of subsection (1), A stalks B where—
  - (a) A engages in a course of conduct,
  - (b) subsection (3) or (4) applies, and
  - (c) A's course of conduct causes B to suffer fear or alarm.
- (3) This subsection applies where A engages in the course of conduct with the intention of causing B to suffer fear or alarm.
- (4) This subsection applies where 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 or alarm.
- (5) It is a defence for a person charged with an offence under this section to show that the course of conduct—
  - (a) was authorised by virtue of any enactment or rule of law,
  - (b) was engaged in for the purpose of preventing or detecting crime, or
  - (c) was, in the particular circumstances, reasonable.
- (6) In this section—

“conduct” means—

  - (a) following B or any other person,
  - (b) contacting, or attempting to contact, B or any other person by any means,

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**Changes to legislation:** There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Cross Heading: Stalking. (See end of Document for details)

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- (c) publishing any statement or other material—
    - (i) relating or purporting to relate to B or to any other person,
    - (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),
  - (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,
  - (i) watching or spying on B or any other person,
  - (j) acting in any other way that a reasonable person would expect would cause B to suffer fear or alarm, and
- “course of conduct” involves conduct on at least two occasions.
- (7) A person convicted of the offence of stalking is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both,
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- (8) Subsection (9) applies where, in the trial of a person (“the accused”) charged with the offence of stalking, the jury or, in summary proceedings, the court—
- (a) is not satisfied that the accused committed the offence, but
  - (b) is satisfied that the accused committed an offence under section 38(1).
- (9) The jury or, as the case may be, the court may acquit the accused of the charge and, instead, find the accused guilty of an offence under section 38(1).

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**Commencement Information**

**II** S. 39 in force at 13.12.2010 by [S.S.I. 2010/413](#), [art. 2](#), [Sch.](#)

**[F139A Offence of stalking committed outside the United Kingdom**

- (1) If—
- (a) a person's course of conduct consists of or includes conduct in a country outside the United Kingdom,
  - (b) the course of conduct would constitute the offence of stalking if it occurred in Scotland, and
  - (c) the person is a United Kingdom national or is habitually resident in Scotland,
- then the person commits that offence.
- (2) If a person's course of conduct consists entirely of conduct in a country outside the United Kingdom—
- (a) the person may be prosecuted, tried and punished for an offence of stalking by virtue of this section—

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- (i) in any sheriff court district in Scotland in which the person is apprehended or is in custody, or
    - (ii) in such sheriff court district as the Lord Advocate may determine, as if the offence had been committed entirely in that district, and
  - (b) the offence is, for all purposes incidental to or consequential on trial or punishment, to be deemed to have been committed entirely in that district.
- (3) In this section—
- “country” includes territory;
  - “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation);
  - “United Kingdom 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
    - (c) a British protected person within the meaning of that Act.]

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#### Textual Amendments

**F1** S. 39A inserted (29.6.2021) by Domestic Abuse Act 2021 (c. 17), s. 90(6), **Sch. 3 para. 6**; S.S.I. 2021/239, reg. 2

**Changes to legislation:**

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