Protection from Harassment Act 1997

1997 CHAPTER 40

Scotland

8 Harassment.

(1) Every individual has a right to be free from harassment and, accordingly, a person must not pursue a course of conduct which amounts to harassment of another and—

(a) is intended to amount to harassment of that person; or

(b) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person.

(2) An actual or apprehended breach of subsection (1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question; and any such claim shall be known as an action of harassment.

(3) For the purposes of this section—

"conduct" includes speech;

"harassment" of a person includes causing the person alarm or distress; and

a course of conduct must involve conduct on at least two occasions.

(4) It shall be a defence to any action of harassment to show that the course of conduct complained of—

(a) was authorised by, under or by virtue of any enactment or rule of law;

(b) was pursued for the purpose of preventing or detecting crime; or

(c) was, in the particular circumstances, reasonable.

(5) In an action of harassment the court may, without prejudice to any other remedies which it may grant—

(a) award damages;

(b) grant—

(i) interdict or interim interdict;

(ii) if it is satisfied that it is appropriate for it to do so in order to protect the person from further harassment, an order, to be known as a "non-harassment order", requiring the defender to refrain from such

conduct in relation to the pursuer as may be specified in the order for such period (which includes an indeterminate period) as may be so specified,

but a person may not be subjected to the same prohibitions in an interdict or interim interdict and a non-harassment order at the same time.

(6) The damages which may be awarded in an action of harassment include damages for any anxiety caused by the harassment and any financial loss resulting from it.

(7) Without prejudice to any right to seek review of any interlocutor, a person against whom a non-harassment order has been made, or the person for whose protection the order was made, may apply to the court by which the order was made for revocation of or a variation of the order and, on any such application, the court may revoke the order or vary it in such manner as it considers appropriate.

[F1](8) . . . . . .

Textual Amendments

F1 S. 8(8) repealed (7.7.2011) by Damages (Scotland) Act 2011 (asp 7), s. 19(3), **Sch. 2** (with ss. 17, 19(2)); S.S.I. 2011/268, art. 3 (with art. 4)

9 Breach of non-harassment order.

(1) Any person who is [F2]... in breach of a non-harassment order made under section 8 is guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both such imprisonment and such fine; and

(b) on summary conviction, to imprisonment for a period not exceeding six months or to a fine not exceeding the statutory maximum, or to both such imprisonment and such fine.

(2) A breach of a non-harassment order shall not be punishable other than in accordance with subsection (1).

[[F3](3) A constable may arrest without warrant any person he reasonably believes is committing or has committed an offence under subsection (1).

(4) Subsection (3) is without prejudice to any power of arrest conferred by law apart from that subsection.**]**

Textual Amendments

F2 Words in s. 9(1) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 49(2)(a)**, 89(2); S.S.I. 2003/288, art. 2, Sch.

F3 S. 9(3) - S. 9(4) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 49(2)(b)**, 89(2); S.S.I. 2003/288, art. 2, Sch.

10 Limitation. S

(1) After section 18A of the [M1]Prescription and Limitation (Scotland) Act 1973 there is inserted the following section—

"**18B Actions of harassment.**

(1) This section applies to actions of harassment (within the meaning of section 8 of the Protection from Harassment Act 1997) which include a claim for damages.

(2) Subject to subsection (3) below and to section 19A of this Act, no action to which this section applies shall be brought unless it is commenced within a period of 3 years after—

(a) the date on which the alleged harassment ceased; or

(b) the date, (if later than the date mentioned in paragraph (a) above) on which the pursuer in the action became, or on which, in the opinion of the court, it would have been reasonably practicable for him in all the circumstances to have become, aware, that the defender was a person responsible for the alleged harassment or the employer or principal of such a person.

(3) In the computation of the period specified in subsection (2) above there shall be disregarded any time during which the person who is alleged to have suffered the harassment was under legal disability by reason of nonage or unsoundness of mind.".

(2) In subsection (1) of section 19A of that Act (power of court to override time-limits), for "section 17 or section 18 and section 18A" there is substituted " section 17, 18, 18A or 18B ".

Marginal Citations

M1 1973 c.52.

11 Non-harassment order following criminal offence.

After section 234 of the [M2]Criminal Procedure (Scotland) Act 1995 there is inserted the following section—

" Non-harassment orders

234A Non-harassment orders.

(1) Where a person is convicted of an offence involving harassment of a person ("the victim"), the prosecutor may apply to the court to make a non-harassment order against the offender requiring him to refrain from such conduct in relation to the victim as may be specified in the order for such period (which includes an indeterminate period) as may be so specified, in addition to any other disposal which may be made in relation to the offence.

(2) On an application under subsection (1) above the court may, if it is satisfied on a balance of probabilities that it is appropriate to do so in order to protect the victim from further harassment, make a non-harassment order.

Status: *Point in time view as at 07/07/2011.*
Changes to legislation: *There are currently no known outstanding effects for the Protection from Harassment Act 1997, Cross Heading: Scotland. (See end of Document for details)*

(3) A non-harassment order made by a criminal court shall be taken to be a sentence for the purposes of any appeal and, for the purposes of this subsection "order" includes any variation or revocation of such an order made under subsection (6) below.

(4) Any person who is found to be in breach of a non-harassment order shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both such imprisonment and such fine; and

(b) on summary conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both such imprisonment and such fine.

(5) The Lord Advocate, in solemn proceedings, and the prosecutor, in summary proceedings, may appeal to the High Court against any decision by a court to refuse an application under subsection (1) above; and on any such appeal the High Court may make such order as it considers appropriate.

(6) The person against whom a non-harassment order is made, or the prosecutor at whose instance the order is made, may apply to the court which made the order for its revocation or variation and, in relation to any such application the court concerned may, if it is satisfied on a balance of probabilities that it is appropriate to do so, revoke the order or vary it in such manner as it thinks fit, but not so as to increase the period for which the order is to run.

(7) For the purposes of this section "harassment" shall be construed in accordance with section 8 of the Protection from Harassment Act 1997.".

Marginal Citations

M2 1995 c.46.

Status:
Point in time view as at 07/07/2011.

Changes to legislation:
There are currently no known outstanding effects for the Protection from Harassment Act 1997, Cross Heading: Scotland.