

SERIOUS ORGANISED CRIME AND POLICE ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 4: Public order and conduct in public places etc.

Section 126: Harassment etc of a person in his home

307. *Subsection (1)* inserts a new section 42A in the Criminal Justice and Police Act 2001 to create a new offence of harassment etc of a person in his home.
308. Currently, section 42 of the Criminal Justice and Police Act 2001 gives the police the power to issue a direction to any person who is outside or in the vicinity of a person's home and who they reasonably believe is there to represent to the resident, or persuade the resident, that he should not do something that he is entitled to do (or should do something that he is not obliged to do) and his presence amounts to or is likely to cause the resident harassment, alarm or distress.
309. The new offence criminalises behaviour of broadly the same kind as that which currently enables the police to issue a direction under section 42 of the Criminal Justice and Police Act 2001.
310. New section 42A(1) (a) to (d) sets out the four ingredients of the new offence which need to be proved. A person will commit an offence if (i) he is present outside or in the vicinity of any premises that are used as a dwelling; (ii) he is there to represent to the resident or another individual, or persuade the resident or another individual, that he should not do something he is entitled to do or should do something he is not obliged to do; (iii) the person intends his presence to amount to harassment, alarm or distress to the resident or knows or ought to know that his presence is likely to do so; and (iv) his presence amounts to or is likely to result in harassment of the resident or another individual.
311. New section 42A(2) defines the individuals who can be subjected to harassment by a person under subsection (1) - namely, the resident, someone in the resident's dwelling or a person in a nearby dwelling, for example a neighbour.
312. New section 42A(3) clarifies that a person's presence in subsections (1)(c) and (d) can be a person's presence on his own or with other people.
313. New section 42A(5) sets out the penalty for the offence under subsection (1).
314. New section 42A(7) clarifies that "dwelling" in section 42A has the same meaning as in Part 1 of the Public Order Act 1986, namely "any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied...".

*These notes refer to the Serious Organised Crime and Police
Act 2005 (c.15) which received Royal Assent on 7th April 2005*

315. *Subsection (2)* provides a constable in uniform with a power to arrest anyone who he reasonably suspects is committing or has committed an offence under new section 42A. By virtue of *subsection (3)* this arrest power will cease to have effect on the commencement of section 110 of this Act which provides a new arrest regime for offences.