

STALKING PROTECTION ACT 2019

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Stalking Protection Act 2019 (c. 9) which received Royal Assent on 15 March 2019.

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

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Overview of the Act

- 1 The purpose of this Act is to create a new civil stalking protection order to protect members of the public from risks associated with stalking.
- 2 The Act makes provision for a new order which will:
 - be available on application by 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 Act 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.
- 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.
- 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.

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 section 2A 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.

This is not an exhaustive list and each case should be considered on its circumstances.

- 15 The Stalking Protection Act makes provision for the Police to apply to the Magistrates’ Court for a civil stalking protection order, without the requirement for a conviction, where it appears that a perpetrator has carried out acts associated with stalking, they pose a risk associated with stalking to another person and they believe the proposed order is necessary to protect another person from such a risk.
- 16 In similar vein to the criminal stalking offences under the Protection From Harassment Act the Stalking Protection Act does not define stalking, however section 1 of the Act signposts readers to the examples of acts or omissions associated with stalking set out in section 2A of the 1997 Act.
- 17 Secondary legislation will make provision for subjects of applications and orders to apply for criminal legal aid as well as making provision for Magistrates’ Courts for service of summonses and orders on those subject to applications.

Territorial extent and application

- 18 Section 15(1) sets out the territorial extent of the Act, that is the jurisdiction in which the Act applies. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect.
- 19 The provisions in this Act extend and apply to England and Wales only.
- 20 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.
- 21 The matters to which the provisions of the Act 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 Act. 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 Act

Section 1: Applications for Orders

- 22 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.
- 23 The order will be available on application to a magistrates' court by a chief officer of police.
- 24 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 does not apply to the chief constables of the British Transport Police and of the Ministry of Defence Police, who may apply for an order under section 1(1) but who do not have a territorial police area.
- 25 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.
- 26 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'.
- 27 Subsection (2) sets out what a stalking protection order is: a preventative order which can impose both prohibitions and requirements on the perpetrator as are necessary for the purpose of preventing them from carrying out acts associated with stalking.
- 28 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 for example 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.

This is not an exhaustive list.

- 29 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 could include, for example, requiring the defendant to:
 - attend a perpetrator intervention programme;
 - attend a mental health assessment;

This is not an exhaustive list.

- 30 Subsection (5) provides that the stalking behaviour considered when determining an application for an order can have taken place in any part of the United Kingdom, or abroad. This can also include behaviour that took place prior to this Act coming into force. This Act 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.

Section 2: Power to make Orders

- 31 This section 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 Section 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 section can be appealed to the Crown Court. The appeals process is set out at Section 7.

Section 3: Duration of orders

- 38 This section 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.

Section 4: Variations, renewals and discharges

- 42 This section 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 Section 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 section can be appealed to the Crown Court. The appeals process is set out at Section 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 to 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 is 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 made¹ without the consent of the defendant and, where the application was made by the chief officer of police, by the appropriate chief officer of police. Which chief officer of police is required to give consent depends on 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.

¹ 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 section 3(2).

Section 5: Interim stalking protection Orders

- 52 This section 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 main application for the stalking protection order under Section 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 Section 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 28 and 29 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 Section 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 Section 4.

Section 6: Content of Orders

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

Section 7: Appeals

- 61 This section 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 Section 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.

Section 8: Offence of breaching stalking protection order etc.

- 63 This section 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, in relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, six 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.

Section 9: Notification requirements

- 66 This section 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 section 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 Act. 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.

Section 10: Method of notification and related matters

- 70 This section sets out where and how a defendant must notify the police depending on where their home 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 Section 14(1) of the Act.
- 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 which last made an order or interim order in respect of them is situated. 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.

Section 11: Offences relating to notification

- 75 This section 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, in relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, six 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.

Section 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 Act. The statutory guidance will provide information about the procedure for applying for a Stalking Protection Order as well as providing a practical toolkit for police to use when making applications.

Section 13: Procedure

- 78 This section sets out some procedural details on the operation of the Act in the magistrates' courts.
- 79 Subsection (1) provides that an application to a magistrates' court under any provision in the Act is to be made by complaint. This is the process by which civil matters are commenced in the magistrates' court.
- 80 Subsection (2) provides that section 127 of the Magistrates' Courts Act 1980 (time limits) does not apply to any provision in the Act. 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.

Section 14: Interpretation

- 81 This section defines various words and phrases used within the Act.

Section 15: Extent, commencement and short title

- 82 This section sets out the territorial extent of the Act, how and when the provisions will come into force and the short title of the Act.

Commencement

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

Related documents

- 84 The following documents are relevant to the Act 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
- Delegated Powers Memorandum:
<https://publications.parliament.uk/pa/bills/lbill/2017-2019/0145/18145-DPM.pdf>

Annex A - Hansard References

85 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	19 July 2017	Vol. 627 Col. 877
Second Reading	19 January 2018	Vol. 634 Col. 1229
Public Bill Committee	9 July 2018	Vol. 644 Col. 1
Report and Third Reading	23 November 2018	Vol. 649 Col. 1147
<i>House of Lords</i>		
Introduction	26 November 2018	Vol. 794 Col. 485
Second Reading	18 January 2019	Vol. 795 Col. 455
Third Reading	6 March 2019	Vol. 796 Col. 613
Royal Assent	15 March 2019	House of Commons Vol. 656 Col. 665
		House of Lords Vol. 796 Col. 1211

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