

These notes refer to the Protection from Stalking Act (Northern Ireland) 2022 (c.17) which received Royal Assent on 26 April 2022

Protection from Stalking Act (Northern Ireland) 2022

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Sections 1 to 5 - Offences

Section 1 - Offence of stalking

Subsection (1) creates the offence of stalking where a person (A) engages in a course of conduct that causes another person (B) to suffer fear, alarm or substantial distress or is such that a reasonable person, or a reasonable person who has any particular knowledge of B that A has, would consider to be likely to cause them to suffer fear, alarm or substantial distress.

Subsection (2) provides that the offence is subject to at least one of the two further conditions being met.

That (i) A either intended the conduct to cause fear, alarm or substantial distress, or (ii) ought in the circumstances to have known that the conduct would have that effect.

Subsection (3) provides that a course of conduct can constitute the offence of stalking if it consists of or includes conduct occurring outside the United Kingdom.

The course of conduct could constitute the stalking offence as if it occurred in Northern Ireland and the accused would need to be a UK national or habitually resident in Northern Ireland.

Subsection (4) defines the meaning of conduct as:

- following B or any other person,
- contacting, or attempting to contact, B or any other person by any means,
- publishing any statement or other material relating or purporting to relate to B or to any other person, or purporting to originate from B or from any other person,
- monitoring the use by B or by any other person of the internet, email or
- any other form of electronic communication,

- entering any premises,
- loitering in any place (whether public or private),
- interfering with any property in the possession of B or of any other person,
- 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,
- watching or spying on B or any other person, or
- acting in any other way that a reasonable person, or a reasonable person who has any particular knowledge of B that A has, would expect would cause B to suffer fear, alarm or substantial distress;

A “course of conduct” is defined as involving conduct on two or more occasions; and “substantial distress” means distress that has a substantial adverse effect on B’s day to day activities.

Subsection (5) provides for a defence for a person charged with the stalking offence.

Subsection (6) provides the penalty for the offence of stalking. The maximum penalty on summary conviction (heard in a magistrates’ court) is 12 months imprisonment or a fine up to the statutory maximum (that is £5,000) or both. The maximum penalty on conviction on indictment (heard in a crown court) is 10 years imprisonment or a fine, or both.

Subsection (7) provides an alternative conviction of threatening or abusive behaviour where, when the facts do not amount to the offence of stalking in proceedings, a person may be convicted of the alternative offence that can be made out after a single incident or a course of conduct.

Section 2 - Offence of threatening or abusive behaviour

Subsection (1) creates the offence of threatening or abusive behaviour where a person (A) behaves in a threatening or abusive manner and the behaviour would be likely to cause a reasonable person to suffer fear and alarm; and (A) intends by the behaviour to cause fear and alarm or is reckless as to whether the behaviour causes fear or alarm.

Subsection (2) provides a defence for a person charged with the offence to show that the behaviour was reasonable in the particular circumstances.

Subsection (3) describes behaviour being of any kind including, in particular, things said or otherwise communicated as well as things done. Behaviour can consist of a single act or occasion or a course of conduct (two or more occasions).

Subsection (4) provides the penalty for the offence of threatening or abusive behaviour. The maximum penalty on summary conviction (heard in a magistrates’ court) is 12 months imprisonment or a fine not exceeding the

statutory maximum (£5,000) or both. The maximum penalty on conviction on indictment (heard in a crown court) is 5 years imprisonment or a fine, or both.

Section 3 - Special measures directions

Subsection (2) provides that all victims of an offence of stalking will have automatic eligibility for assistance (such as the use of live links or screens at court) with giving evidence in proceedings.

Section 4 - Alternative to conviction of the domestic abuse offence

This section adds the offences of stalking and threatening and abusive behaviour, as alternative convictions in a trial of the domestic abuse offence under the Domestic Abuse and Civil Proceedings Act (NI) 2021.

Section 5 - No right to claim trial by jury

This section amends Article 29(1) of the Magistrate's Courts (NI) Order 1981 - the effect of which is to prohibit those accused of the stalking offence or offence of threatening and abusive behaviour, before a magistrates' court, electing for trial by jury at a crown court.

Section 6 to 17 – Stalking Protection Orders

Section 6 - Meaning of act associated with stalking and risk associated with stalking

This section gives a definition of the acts and risk associated with stalking.

Section 7 - Applications for orders

This section 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.

Subsection (1) 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.

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 within a specified distance.

This is not an exhaustive list.

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.

An order may be made on application to a magistrates' court by the Chief Constable.

To make an application, the Chief Constable 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 the order is necessary in order to protect the other person from that risk.

Subsection (3) sets out that the Chief Constable may make an application only in respect of someone who resides in Northern Ireland or who they believe is in or is intending to come to Northern Ireland.

Subsection (4) provides that the behaviour considered when making 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.

Section 8 - Power to make orders

This section sets out the powers of the 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.

Subsection (2) requires that the 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 another person from that risk.

Subsection (2) (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 for example 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 principal subject of the stalking acts.

This is known as 'stalking by proxy'.

This also covers other scenarios too, for example, a stalker may be known to target unconnected victims who fit a particular description.

Subsection (4) provides that any prohibitions or requirements included within the terms of the order (if deemed necessary as defined in subsection (3)) 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, among other things proportionate.

This is also designed to enable workability of orders and to avoid conflict with ECHR rights.

Subsection (5) applies 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. The subsection 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.

Subsection (6) 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. If the defendant lives in NI or was resident in NI when the order was made, or is a UK national then they must comply with any prohibition or requirement in the order, everywhere outside the UK.

For example, any prohibition in the order that prohibits any form of contact with the victim must be complied with even if the defendant was to travel outside NI or the UK.

Section 9 - Duration of orders

This section sets out the period of time for which an order has effect.

Subsection (1) provides that a provision of an order has effect for a fixed period specified within the terms of the order, or until a further order is made.

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. A further order could be a variation, renewal or discharge of the existing order.

Subsection (2) 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 10 - Variations, discharges and renewals

This section sets out how a stalking protection order may be varied, renewed or discharged and who may apply for these measures.

An order may be varied, renewed or discharged on application to a court of summary jurisdiction by either the Chief Constable or the defendant who is subject to the order.

Variations - Subsection (3) (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.

Renewals - 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.

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.

Discharge - 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. 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.

Section 11 - Interim stalking protection orders

This section sets out a description of an interim stalking protection order. It also sets out the powers of a court of summary jurisdiction 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.

The purpose of this provision is to protect the victim whilst the main application for the stalking protection order is being determined.

Subsection (1) provides that interim orders can prohibit the defendant from doing something, or require the defendant to do something, as the court deems appropriate.

Subsection (3) provides that interim stalking protection orders will be available on application to a court of summary jurisdiction by the Chief Constable, either at the same time as the "main" application is made under section 7, or in a separate application if the "main" application has already been made.

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 among other things proportionate. This is also designed to enable workability of orders and to avoid conflict with ECHR rights.

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. If the defendant lives in NI or was resident in NI when the

order was made, or is a UK national then they must comply with any prohibition or requirement in the order, everywhere outside the UK.

For example, any prohibition in the order that prohibits any form of contact with the victim must be complied with even if the defendant was to travel outside NI or the UK.

Subsections (6), (9) and (10) deal with the duration of an interim order. The starting point is that an interim order has effect only for a fixed period specified in the order (although the order can be discharged early, or the period varied, or the order renewed).

If a stalking protection order is made on the main application, or if the main application is withdrawn, the interim order lapses then if it is still in force.

If the court decides not to make a stalking protection order on the main application, and the interim order is still in force at the time of that decision, then the interim order (instead of ending at the end of the fixed period) comes to an end on the first occasion when: there is no pending appeal by the Chief Constable to the county court against the refusal; the period, or extended period, for appealing has expired; and there is no pending application made pre-expiry for extension (or further extension) of that period.

Subsection (7) provides that the defendant or the Chief Constable 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 10.

Section 12 - Content of, and procedure for, orders

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

Order and some procedural details on the operation of the Act in a court of summary jurisdiction.

Subsection (2) provides that an application to a court of summary jurisdiction for the making, renewal, variation or discharge of a stalking protection order (or interim order) is to be made by complaint. This is the process by which civil matters are commenced in the magistrates' court.

Subsection (3) provides that Article 78(1) of the Magistrates' Courts (NI) Order 1981 (time limits) does not apply to any such application.

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.

Subsections (4) to (7) provide that where a person is under 18 when an application for an order against them is made, or when an application is made to vary or renew or discharge an existing order against them, the application is to be heard in a youth court.

Section 13 - Offence of breaching order

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.

Subsection (2) makes it clear that the offence of breaching an order, although it is an offence under the law of Northern Ireland that can be prosecuted only in the courts of Northern Ireland, covers non-compliance at any place outside Northern Ireland where the order was to be complied with.

Subsection (3) provides the penalty for the offence of breaching a stalking protection order or interim stalking protection order.

The maximum penalty on summary conviction (heard in a magistrates' court) is 6 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both. The maximum penalty on conviction on indictment (heard in a crown court) is 5 years imprisonment or a fine, or both.

Subsection (4) means that whether an offence of breaching a stalking protection order (or interim order) is dealt with by a youth court depends on the defendant's age at the time of the prosecution. It ensures that an adult will not be prosecuted in a youth court just because the order they are accused of breaching was made by a youth court when they were a young person.

Section 14 - Notification requirements

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 the order comes into force.

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.

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, Part 8 of the Justice (NI) Act 2015 (which relates to Violent Offender Prevention Orders) or Schedule 3 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015. This means that the defendant cannot be subject to other notification requirements at the same time.

Subsection (6) sets out what happens when a relevant defendant transitions between the notification requirements under Part 2 of the Sexual Offences Act 2003, Part 8 of the Justice (NI) Act 2015 (which relates to Violent Offender Prevention Orders) or Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 and the notification requirements in the Act. In these circumstances, the defendant must notify

within three days of the final day that they are subject to other notification requirements. This ensures that there is no gap between two sets of notification requirements.

Subsection (8) sets out the meaning of “home address”.

Section 15 - Method of notification and related matters

This section sets out where and how a defendant must notify the police; 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.

Subsection (2) provides that a notification must be acknowledged in writing and in such form as the Department of Justice may direct.

Subsections (5) and (6) sets out that fingerprints and/or photographs taken for the purpose of verifying the identity of the person must be destroyed by police no later than the date on which the person ceases to be subject to a stalking protection order or an un-replaced interim stalking protection order.

Section 16 - Offences relating to notification

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.

Subsection (2) provides the penalty for the offence relating to notification requirements.

The maximum penalty on summary conviction (heard in a magistrates’ court) is 6 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both.

The maximum penalty on conviction on indictment (heard in a crown court) is 5 years imprisonment or a fine, or both.

Section 17 – Guidance

This section provides that the Department of Justice in Northern Ireland must issue guidance about the effect of the Act; such other matters as the Department considers appropriate as to the criminal law or procedure relating to stalking in Northern Ireland and the exercise of the Chief Constable’s functions under the provisions of this Act relating to stalking protection orders or interim stalking protection orders.

A person exercising public functions to whom the guidance relates must have regard to it in the exercise of those functions and the Department must keep any issued guidance about stalking, under this section, under review and revise that guidance as necessary in light of review. Finally, the guidance (including any revised guidance) must be laid before the Assembly.

Section 18 – Guidance on data collection

This section provides that the Department of Justice may issue guidance to relevant bodies about the sort of information which it seeks to obtain from them for the purpose of the assessment by it of the operation of the Act.

It also requires the Department of Justice to have regard to information which it obtains from the relevant bodies in relation to the operation of the Act when determining the steps (if any) that could be taken by it for the purpose of ensuring the effectiveness of the operation of legislation around the new offence of stalking to stalking protection orders or interim stalking protection orders.

The relevant bodies are the PSNI and the Public Prosecution Service.

Section 19 – Training

This section places a duty on the Police Service of Northern Ireland, the Public Prosecution

Service and any additional public body that has functions within the Criminal Justice System in Northern Ireland (specified by the Department in Regulations), to ensure that training on the effect of the Act is provided to personnel, as it considers appropriate.

Subsection (1) requires that training must be provided at least annually and would be mandatory for personnel/staff that have responsibilities for dealing with cases involving stalking, to ensure the effective discharge of their responsibilities in relation to such cases.

Subsections (2) and (3) identify the Police Service of Northern Ireland and the Public Prosecution Service as listed authorities for training purposes.

Subsection (4) places a duty of the Department of Justice for training Northern Ireland Courts and Tribunal staff as an Agency of the Department, as well as any additional agency that has functions within the criminal justice system in Northern Ireland and which the Department selects in connection with this section.

Subsection (5) requires the Department of Justice to publish a statement setting out the level of participation in training by personnel/staff in each relevant organisation, within 18 months from the day on which the provisions come into operation, and annually thereafter.

Section 20 – Report on the operation of this Act

This section requires the Department of Justice to prepare a report on the operation of the Act.

Subsection (2) sets out that the report is to set out a range of information on the offence of stalking, including: the number of stalking incidents recorded by the Police Service of Northern Ireland (broken down by police district); the number

of files submitted to the Public Prosecution Service; prosecutions; convictions; and the average length of time for disposal of cases.

Subsections (3) and (4) details that the report is to set out a range of information in relation to stalking protection orders and interim stalking protection orders, including: the number of stalking protection order incidents recorded by the Police Service of Northern Ireland; the number of applications for orders; the number of orders discharged; the number of applications to vary, renew or discharge orders; and information about the level of compliance with orders.

Subsection (5) provides that the report must include information about the level of training under section 19; information about how court business is arranged; the experience at court of witnesses; any issuing, review or revision of guidance by the Department under section 17; public awareness raising; and anything else considered appropriate by the Department.

Subsection (6) provides that there are ongoing reporting requirements, with each reporting period three years after the previous one. The first reporting period is two to three years after the provisions relating to the offence of stalking and to stalking protection orders and interim stalking protection orders come into operation.

Subsections (7) and (8) requires the report to be laid at the Assembly and published while subsection (9) provides that the requirement would no longer apply if regulations to this effect were brought forward, within ten years after the Act comes into operation being the earliest that this can take effect.

Sections 21 - 23

Section 21 - Interpretation

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

Section 22 – Commencement

This section sets out when the provisions will come into force.

Section 23 - Short Title

This section provides the short title of the Act, which is the Protection from Stalking Act (Northern Ireland) 2022.