

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.