



**College of
Policing**

AUTHORISED PROFESSIONAL PRACTICE

Briefing Note for Amendments to the Protection from Harassment Act 1997

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1. INTRODUCTION

- 1.1 The Protection of Freedoms Act 2012 has introduced two new offences into the Protection from Harassment Act 1997 and added additional search powers for police officers. These amendments make it easier to protect the public in cases of stalking, and came into effect November 2012.

2. BACKGROUND

- 2.1 In cases of stalking, the offender may develop an obsessive fixation with one or more individuals. Stalking is life changing and can have a significant impact on victims. It is frequently harmful to their psychological, physical and social functioning, irrespective of whether they are physically assaulted. Some victims endure years of abuse and other cases end in homicide. A study in 2011 showed that 50% of victims of online and offline stalking suffer symptoms of Post-Traumatic Stress Disorder¹.
- 2.2 The Protection from Harassment Act 1997 was introduced to deal with offences of harassment and stalking, although stalking was not identified as a legal term. It was intended that such cases would be dealt with as a type of harassment under the Act. The omission of a specific criminal offence of stalking, and a lack of understanding of the behaviours associated with stalking, has resulted in the police and prosecutors failing, in many cases, to take a positive and rigorous approach to dealing with stalking offenders.
- 2.3 The nature and impact of stalking have evolved since the introduction of the Act. The internet and social networking, and the ease and continuity of communication have made it easier to trace, follow and stalk individuals and groups. In addition, obtaining electronic evidence has caused difficulties for investigators.
- 2.4 Following a consultation between members of the police, victims and organisations with a direct interest in preventing stalking, the law has been strengthened. It now deals specifically with stalking and explicitly covers some of the new techniques, including electronic stalking (often referred to as 'cyberstalking').
- 2.5 This briefing note details the new laws and additional powers afforded to police officers and staff. Training will also be provided to ensure that police officers and staff respond efficiently and appropriately to stalking.

3. WHAT IS STALKING?

¹ *The Electronic Communication Harassment Observation (ECHO) Pilot Study Report*, (2011), Maple, Short and Brown, National Centre for Cyberstalking Research, http://www.beds.ac.uk/__data/assets/pdf_file/0003/83109/ECHO_Pilot_Final.pdf

3.1 Stalking is a type of harassment. The Protection of Freedoms Act 2012 inserted section 2A into the Protection from Harassment Act 1997 and created the offence of stalking. Section 2A(3) of the Protection from Harassment Act 1997 gives examples of acts or omissions which are 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.

3.2 The significant point is that if these acts are taken in isolation they might appear to be harmless, but when carried out repeatedly they may amount to stalking. The behaviours listed above are those which are most commonly associated with stalking cases.

3.3 The list is not exhaustive and it is important to remember that the changes to the law still mean that stalking can consist of any type of behaviour experienced by the victim on two or more occasions. The offender must know or ought to know that the course of conduct amounts to harassment of the other person in order to commit the offence.

4. WHICH OFFENCES HAVE BEEN ADDED TO THE PROTECTION FROM HARASSMENT ACT?

- 4.1 Stalking offences are outlined under sections 2A and 4A of the Protection from Harassment Act 1997.
- 4.2 Under section 2A, a person is guilty of an offence of stalking when they pursue a course of conduct that amounts to the harassment of another (which the perpetrator knows or ought to know amounts to harassment) and that conduct amounts to stalking.
- 4.3 Anyone found guilty of an offence under this section is liable, on summary conviction, to imprisonment for a term of up to six months or a fine, or both.
- 4.4 Section 4A of the Protection from Harassment Act can be applied in more serious cases where stalking causes a victim to be in fear of violence on two or more occasions, or where

the stalking causes serious alarm or distress which has a substantial adverse effect on the day-to-day activities of the victim.

- 4.5 The phrase 'substantial adverse effect on the day-to-day activities of the victim' is not defined in section 4A, however, the Home Office considers that in relation to an offence of stalking, evidence of a substantial adverse effect might include:
- (a) the victim changing their routes to work, work patterns, or employment
 - (b) the victim arranging for friends or family to pick up children from school (to avoid contact with the stalker)
 - (c) the victim putting in place additional security measures in their home
 - (d) the victim moving home
 - (e) physical or mental ill-health
 - (f) the victim's deterioration in performance at work due to stress
 - (g) the victim stopping or changing the way they socialise.
- 4.6 Even if a victim tries to continue their daily routine in defiance of a stalker, they may still be able to evidence a substantial impact on their usual day-to-day activities, depending on their individual case.² It should be noted that adverse effects may relate to online activity as well as to physical changes as a result of cyberstalking.
- 4.7 If convicted on indictment, an offender may face imprisonment for up to five years or a fine, or both. On summary conviction, a person is liable to imprisonment for a term of up to six months or a fine, or both.
- 4.8 Where a person is found not guilty under this section, a jury may still find the person guilty under section 2 or 2A.

5. NEW POWERS OF ENTRY FOR SUMMARY ONLY OFFENCES

- 5.1 Section 2B provides new search powers relating to the 2A offence. An officer may apply to a magistrate for a warrant to enter and search premises if there are reasonable grounds to believe that:
- (a) an offence under section 2A has been, or is being, committed,
 - (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,
 - (c) the material –
 - (i) is likely to be admissible in evidence at a trial for the offence, and

² Home Office Circular *A Change to the Protection from Harassment Act 2007* <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/018-2012/>

(ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material (within the meanings given by section 10, 11 and 14 of the Police and Criminal Evidence Act 1984), and

(d) either –

- (i) entry to the premises will not be granted unless a warrant is produced, or
- (ii) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

- 5.2 The term 'premises' is defined in section 23 of the Police and Criminal Evidence Act 1984 (PACE).
- 5.3 An officer may seize and retain anything for which a search has been authorised in the circumstances described above and may use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.

6. ACTIONS TO TAKE IN CASES OF STALKING

- 6.1 Look for opportunities for early intervention. Conduct all relevant intelligence checks on the victim and location, particularly previous history of offences, other names/aliases, bail conditions, cautions, restraining orders, injunctions, court orders or police notices given in relation to conduct under the Protection from Harassment Act 1997.
- 6.2 Incidents, such as anti-social behaviour, criminal damage or minor incidents, whether committed physically or via electronic means, for example, by the internet, mobile phone or SMS, may also be part of a pattern of stalking and should be investigated in order to build a profile of the offender and show any patterns of behaviour which could constitute a course of conduct.
- 6.3 Find out if there are other victims of the perpetrator's stalking behaviour, for example, work colleagues, friends, relatives, children, or if they are inadvertently providing information (for example, on social networks) which the perpetrator is exploiting for stalking or harassment purposes. Provide advice on how to minimise further information about the victim being 'leaked' to the perpetrator, but be aware that in many cases the stalker will find another means of contact. Advise the victim not to communicate with or meet the stalker either online or in person to try to resolve the problem as this may only serve to encourage the behaviour.
- 6.4 Identify and assess risk using a risk checklist such as the 'DASH (Domestic Abuse, Stalking and Harassment and Honour Based Violence) 2009 Checklist' or the 'Stalking Screening Tool'. (Refer to local force procedures about how to assess the risk in stalking cases.) Where stalking is part of a pattern of domestic abuse, it is often an indicator that the situation is very high risk. Use the risk assessment to create a risk management plan with the victim and ensure the victim keeps a contemporaneous diary/record of all stalking incidents. Do not suggest that the victim changes their phone number or moves home. This will not stop the behaviour as the stalker may find another means of contact. Specialist help with stalking risk assessment in very serious or complex cases can be accessed through the SOCA Specialist Operations Centre.

- 6.5 Only use a police information notice (PIN) in cases where there is insufficient evidence for a course of conduct. Before deciding whether to issue a PIN, consider if this is appropriate to the offence. A PIN can provide more information to the perpetrator about the victim, including their address (and how the perpetrator's behaviour makes them feel), so can make the victim more vulnerable.
- 6.6 Provide advice to the victim about the steps they can take to help ensure their safety online and offline. Updated advice is available from The Stalking Helpline (<http://www.stalkinghelpline.org/faq/about-national-stalking-helpline/advice>) on safety online (including changing Facebook settings), safety at home, safety when out and safety at work. 'Get Safe Online' (www.getsafeonline.org) also provides advice about safety online, including how to install anti-virus software, safe use of browsers and safe social networking. Victims should not use their own computer or smart phone to research stalking if they suspect that spyware has been installed.
- 6.7 Within force, contact the Stalking Helpline Single Point of Contact or the Public Protection Unit for specialist advice. For advice on offences involving the use of electronic communication devices, the force Communications Single Point of Contact may also be able to assist.