



## BRIEFING PAPER

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# Stalking: criminal offences

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## Summary

### **The Protection from Harassment Act 1997**

The *Protection from Harassment Act 1997* was originally introduced to deal with stalking but it did not specifically name the offence as that. Instead, it introduced two criminal offences of harassment:

- pursuing a course of conduct amounting to harassment
- putting a person in fear of violence

### **Problems with the 1997 Act**

Campaigners, including the [Protection Against Stalking](#) charity, argued that the 1997 Act was not effective in dealing with stalking. The campaign led to an “Independent Parliamentary Inquiry” by the Justice Unions’ Parliamentary Group. Their report, published in February 2012, found that victims of stalking had a profound lack of confidence in the criminal justice system, and recommended that the 1997 Act be amended as part of a package of reforms.

The Coalition Government [consulted](#) on whether or not there should be changes to the law, including a separate offence of stalking.

### **Two stalking offences introduced in England and Wales**

The *Protection of Freedoms Act 2012* amended the 1997 Act and created two new offences of stalking:

- stalking (section 2A) which is pursuing a course of conduct which amounts to harassment and which also amounts to stalking
- stalking (section 4A) involving fear of violence or serious alarm or distress

The offences came into force on 25 November 2012.

Just over 1,100 prosecutions were commenced under the new stalking offences in both 2015-16 and 2014-14, up from 743 in 2013-14.

The maximum prison sentence for the more serious section 4A offence was doubled to ten years from April 2017.

### **A stalking protection order?**

In December 2015, the Home Office published a consultation on whether to introduce a stalking protection order for cases of “stranger stalking”. The consultation closed on 29 February 2016. The Government published its [response to the consultation](#) in December 2016, promising that the Government would legislate to introduce stalking protection orders “as soon as Parliamentary time allows”.

### **Guidance**

The Crown Prosecution Service (CPS) has published legal guidance on [Stalking and Harassment](#). The College of Policing website has current guidance for the police on its [Stalking and Harassment page](#) and [is working](#) on new Authorised Professional Practice on harassment and stalking.

In September 2014, the Crown Prosecution Service (CPS) and Association of Chief Police Officers (now the National Police Chiefs’ Council) launched a [new protocol](#) on handling stalking cases.

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### Help for victims

Victims can call the [National Stalking and Harassment Helpline](tel:08088020300) (0808 802 0300).

The [Paladin \(National Stalking Advocacy Service\)](http://www.paladin.org.uk) website includes [Advice for Victims](#) and [Advice for Professionals](#).

Victim Support also provides [information on stalking and harassment](#), and has a telephone information line, the [Victims Information Service](tel:08081689293) on 0808 168 9293.

### Scotland

Scotland introduced specific stalking offences two years before England and Wales, in the *Criminal Justice and Licensing (Scotland) Act 2010*. Section 39 of the 2010 Act defines conduct which amounts to stalking by means of a list of behaviours. This includes following or attempting to contact the victim; monitoring electronic communications; watching and spying. It also includes a “catch all” “acting in any other way that a reasonable person would expect would cause (the victim) to suffer fear or alarm”.

The Scottish Government has information on support for stalking victims on the [Stalking: Support](#) pages of the [mygov.scot](http://mygov.scot) website. Police Scotland has advice for victims on the [stalking](#) page of its website, including an [online Stalking Form](#).

[Victim Support Scotland](#) has a helpline on 0345 6039213

People in Scotland can also contact the [National Stalking Helpline](tel:08088020300) on 0808 802 0300.

### Northern Ireland

Northern Ireland has the [Protection from Harassment \(Northern Ireland\) Order 1997](#) which is similar to Protection from Harassment Act 1997. However, it does not include specific stalking offences. Before the Northern Ireland Assembly was dissolved in January 2017, its Justice Committee conducted a [Review of the Need for Stalking Legislation in Northern Ireland](#).

The Police Service Northern Ireland provides information on [Harassment and Stalking](#), including a leaflet, [Stalking and harassment: advice and information](#).

[Victim Support Northern Ireland](#) provides practical help and information for victims on their [Help for victims: Stalking](#) page.

### Related Library briefing paper

The Library has published a [paper](#) on the *Protection from Harassment Act 1997*.

# 1. The Protection from Harassment Act 1997

## 1.1 Why was the 1997 Act introduced?

The Bill which became the Protection from Harassment Act 1997 was introduced following public concern and consultation on the problem of stalking.<sup>1</sup> When the then Government introduced the Bill, it described the intention as being “to put a stop to the fear and misery caused by stalkers, nuisance neighbours and racial abuse”.<sup>2</sup> However, crucially, the legislation did not use the term “stalking” but the broader term “harassment”.

The Protection from Harassment Act 1997 was originally supposed to deal with stalking, but used the wider term, harassment.

At the time, the Law Society expressed concern about the potentially wide application of the new legislation.<sup>3</sup> Victim Support, on the other hand, strongly welcomed the proposal for it to be widely drafted in order to catch a wider range of activities than those of stalkers alone.<sup>4</sup> The Act came into force on 16 June 1997, a few weeks after Labour won the General Election.

## 1.2 What offences did the 1997 Act create?

Section 1 of the 1997 Act prohibits a course of conduct amounting to harassment which, if carried out, would give rise to a criminal penalty under section 2 and might be the subject of a claim in civil proceedings under section 3.

Harassment is not fully defined, but section 7 of the Act states that “references to harassing a person include alarming the person or causing the person distress.” Whilst most stalking behaviours would fall within this, these provisions did not mention stalking by name, and did not provide examples of behaviour which would be covered.

Section 2 of the 1997 Act states that “a person who pursues a course of conduct in breach of section 1 is guilty of an offence”. The offence is subject to a maximum penalty of six months’ imprisonment, or an unlimited fine, or both, and is arrestable. It is a summary offence – i.e. triable in the magistrates’ court.

Section 4 of the Act creates a more serious criminal offence of carrying out a course of conduct which puts people in fear of violence. This is an “either way” offence – i.e. it can be tried in the magistrates’ court or on indictment in the Crown Court. Conviction on indictment for this offence may result in a maximum sentence of ten years’ imprisonment or an unlimited fine, or both. The maximum prison sentence was doubled from five years from April 2017 – see section 2.1. below for the background to this change.

A Library [paper](#) (CBP 6648) gives further information on the 1997 Act.

<sup>1</sup> Home Office, *Stalking - The Solutions: A Consultation Paper*, July 1996

<sup>2</sup> “New Bill to stop stalkers and intimidating neighbours”, Home Office press notice 375/96, 5 December 1996

<sup>3</sup> Law Society, *Law Society Response to The Home Office Consultation Paper: Stalking - The Solutions*, October 1996

<sup>4</sup> Victim Support, *Stalking - The Solutions: a response by Victim Support*, September 1996

## 2. Specific stalking offences introduced in England and Wales

### 2.1 The offences

Following a campaign to change the law – and a Coalition Government consultation - section 111 of the *Protection of Freedoms Act 2012* amended the 1997 Act and created two new offences of stalking:

- stalking (section 2A) which is pursuing a course of conduct which amounts to harassment and which also amounts to stalking
- stalking (section 4A) involving fear of violence or serious alarm or distress

The Coalition Government created two new specific stalking offences following a campaign.

The offences came into force on 25 November 2012.<sup>5</sup> Further detail on the campaign to change the law is given in an appendix to this paper.

The maximum penalty for the section 2A offence is six months' imprisonment, an unlimited fine or both.

Until April 2017, the maximum penalty for the more serious section 4A offence was five years' imprisonment or an unlimited fine, or both. The maximum prison sentence was doubled to ten years from 3 April 2017 by the Policing and Crime Act 2017. This was through a Government amendment to the Bill,<sup>6</sup> which followed a campaign by the National Stalking Advocacy Service, [Paladin](#), and a Ten Minute Rule Bill introduced in October 2016 by Alex Chalk.<sup>7</sup>

The maximum sentence for the more serious offence (stalking involving fear of violence) was doubled to 10 years in April 2017.

### 2.2 Types of stalking behaviour

Section 111 of the 2012 Act gives the following examples of the type of behaviour associated with stalking:

- following a person
- contacting, or attempting to contact, a person by any means
- publishing any statement or other material - relating or purporting to relate to a person; or purporting to originate from a person
- monitoring the use by a person of the internet, email or any other form of electronic communication
- loitering in any place (whether public or private)
- interfering with any property in the possession of a person
- watching or spying on a person

### 2.3 Prosecutions

The Crown Prosecution Service provides statistics on prosecutions for stalking offences in its [annual Violence against Women and Girls reports](#). Statistics on prosecutions for Stalking and Harassment offences are also available from the Ministry of Justice (MoJ) but

<sup>5</sup> Home Office circular 018/2012, [A change to the Protection from Harassment Act 1997](#), 16 October 2012

<sup>6</sup> See Ministry of Justice Press Release, [Maximum sentence for stalking to double](#), 6 January 2017

<sup>7</sup> [The Stalking \(Sentencing\) Bill 2016-17](#); [HC Deb 12 October 2016 cc310-312](#),

the two data sets are not strictly comparable. MoJ figures for 2015 can be found in Annex 2 of the CPS publication [Violence Against Women and Girls Crime Report 2015-16](#). The main differences between the CPS and MoJ statistics are also explained here. Statistics for 2016 are also available from the MoJ publication [Criminal Justice System statistics quarterly: December 2016](#) (published 18 May 2017).

In 2015-16, 1,102 prosecutions were commenced under the new offences – almost the same number as those commenced in the previous year. Of these, 643 were for the less serious offence (fear/alarm/distress) and 459 were for the more serious offence (fear of violence/serious alarm or distress).<sup>8</sup>

The overall number of prosecutions commenced for both types of offences were almost the same in 2014-15, up from 743 in 2013-14.<sup>9</sup>

## 2.4 Policing stalking

### Guidance for police

The College of Policing produces guidance for police forces in the form of Authorised Professional Practice (APP). The College published an APP on the two new stalking offences in 2013 in the form of a [Briefing Note for Amendments to the Protection from Harassment Act 1997](#). According to the previous Government's Ending Violence against Women and Girls [Strategy](#) (March 2016), new authorised professional practice on stalking and harassment was due to be published by the end of 2016.<sup>10</sup> However, it has yet to be published.<sup>11</sup>

### Criticisms

The Suzy Lamplugh Trust published a [research report](#) for the April 2016 Stalking Awareness Week which found that stalking was underreported, and that some police forces were doing better than others:

#### Police figures

- The number of stalking cases recorded by the police represents less than 1% of the cases that take place each year.
- There is an alarming discrepancy between the numbers of recorded stalking crimes across different police force areas.
- A number of police forces reported that their recorded stalking figures for 2014/2015 were lower than their recorded stalking figures for 2013/2014.

#### Service Provision by Police and Crime Commissioners

- Since 2013, only nine police and crime commissioners have commissioned services that specifically work with victims of stalking at any point.
- Only 0.18% of the total police and crime commissioner budget for victims' services for England and Wales in 2015/2016 was spent on stalking-specific projects.

#### Stalking and Domestic Homicide

Despite experts recognising the link between stalking and domestic homicide, only 27 domestic homicide reviews in the last five years have identified stalking in the lead up

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<sup>8</sup> [PQ 34342 \[on stalking\]](#), answered 25 April 2016; CPS, [Violence against Women and Girls Crime Report 2015-16](#), September 2016, p6

<sup>9</sup> ["New stalking legislation helps to bring thousands more prosecutions as CPS and ACPO launch protocol to improve service to stalking victims"](#), CPS News, 11 September 2014

<sup>10</sup> *Ibid*, p45

<sup>11</sup> See the College of Police's [Stalking and Harassment](#) page of its APP website, accessed 6 June 2017

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to the murder of the victim. Suzy Lamplugh Trust is concerned that domestic homicide reviews are not always accurately identifying stalking behaviour. We are calling for more research on this topic.<sup>12</sup>

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<sup>12</sup> Suzy Lamplugh Trust, [Out of sight, out of mind](#), 2016, see Key Findings, p5



## 3. What next in England and Wales?

### 3.1 A stalking protection order?

In December 2015, the Home Office published a [consultation](#) on whether to introduce a stalking protection order for cases of “stranger stalking”:

(...) A new order may have benefits specifically for those who are victims of ‘stranger stalking’ who may not be protected by measures available to those victims who are stalked by an (ex) intimate partner or where another type of injunction may not provide adequate provision to deter the perpetrator effectively. What we have termed ‘stranger stalking’ could include for example a patient becoming fixated on their doctor or other health professional, a work colleague, or originate from an online interaction (a chat room for example).

(...) We are...concerned that a gap may exist in measures available to protect victims of ‘stranger stalking’ in particular and to intervene early with these perpetrators and prevent these deeply entrenched obsessions from developing.

We are clear that the introduction of any new measure would not be intended to replace robust investigation and prosecution of these cases. It would be a measure to be used at the early stages where a concerning pattern of behaviour is emerging but when a prosecution was not possible at that time or further evidence was required to progress to a charge, to ensure the safety of the victim, and allow interventions to help deter the perpetrator from carrying on their offending behaviour.<sup>13</sup>

The consultation closed on 29 February 2016.

The Conservative Government’s response document was published on 7 December 2016, and this confirmed that it would legislate to introduce civil stalking protection orders “as soon as Parliamentary time allows”:

The responses to the consultation highlight that there is a gap in the current protections available, and lend strong support to the introduction of a civil stalking protection order. The Government will therefore legislate to introduce a new stalking protection order as soon as Parliamentary time allows. The order will address the legislative gap and allow the police and the courts to intervene early. It will:

- be available on application from the police to the courts where a victim of stalking requires protection, ensuring the onus to take action is not on the victim;
- have the flexibility to impose both restrictions and positive requirements on the perpetrator, to allow the imposition of effective and appropriate interventions; and
- have a criminal penalty for breach, to ensure that there are consequences where an individual does not comply with its conditions .

The Conservative government said it would introduce new civil stalking protection orders when Parliamentary time allowed.

We are clear that the introduction of an order should not deter police and prosecutors from seeking a prosecution where it is possible to do so. The order is intended to ensure that a tool is available to protect victims before the stage is reached when a charge can be brought. It will support our commitment to continuing to lead efforts to tackle violence against women and girls at home and abroad.

The new order will be part of a broader set of measures to tackle stalking - these include ongoing work to improve the police response to stalking, raise awareness

<sup>13</sup> Home Office, [Introducing a stalking protection order - a consultation](#), December 2015, pp7-8

amongst professionals, and increase the number of prosecutions for stalking offences.<sup>14</sup>

No legislation had been introduced at the time of the 2017 General Election. However, in February 2017, the Prime Minister, Theresa May, announced plans for a “major programme of work leading towards bringing forward a Domestic Violence and Abuse Act.”<sup>15</sup> It is not clear whether or not the Conservative government intended this legislation to be the vehicle for introducing the new orders.

### 3.2 A joint inspection of police and the CPS in 2017

Her Majesty’s Inspectorate of Constabulary and Her Majesty’s Crown Prosecution Inspectorate are carrying out a joint inspection of how the police and the CPS deal with cases involving stalking and harassment.<sup>16</sup>

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<sup>14</sup> Home office, [Introducing a stalking protection order - a consultation: Summary of responses](#), December 2016

<sup>15</sup> Prime Minister’s Office/ Home Office/ Ministry of Justice Press release, [Prime Minister's plans to transform the way we tackle domestic violence and abuse](#), 17 February 2017

<sup>16</sup> HMIC, [A joint inspection of stalking and harassment - 2017](#)

## 4. Further sources of information

The Crown Prosecution Service (CPS) has published guidance on [Stalking and Harassment](#).

In September 2014, the Crown Prosecution Service (CPS) and Association of Chief Police Officers (now the National Police Chiefs' Council) launched a [new protocol](#) on handling stalking cases.<sup>17</sup>

### Help and advice

- [National Stalking and Harassment Helpline](#) (0808 802 0300)
- The [Paladin National Stalking Advocacy Service](#) (020 3866 4107) was formed in 2013 by some of those who had campaigned for specific staking offences. The Paladin website includes [Advice for Victims](#) and [Advice for Professionals](#)
- [Suzy Lamplugh Trust](#) (020 7091 0014)
- Victim Support provides information on [stalking and harassment](#), and has a telephone information line, the [Victims Information Service](#) (0808 168 9293)

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<sup>17</sup> ACPO/CPS, [Protocol on the appropriate handling of stalking offences between the Crown Prosecution Service & ACPO](#), September 2014; "New stalking legislation helps to bring thousands more prosecutions as CPS and ACPO launch protocol to improve service to stalking victims", CPS News, 11 September 2014

## 5. Scotland

### 5.1 Stalking offences

As the Appendix of this Briefing Paper sets out, the offences in England and Wales were based on the specific criminal offence of stalking introduced in Scotland by the *Criminal Justice and Licensing (Scotland) Act 2010*. This in turn was based fairly closely on the offence of harassment in the *Protection from Harassment Act 1997*, although with important differences. The new offence came into force in December 2010.

Scotland introduced a specific stalking offence in December 2010, two years before England and Wales.

Section 39 of the 2010 Act defines conduct which amounts to stalking by means of a list of behaviours. This includes following or attempting to contact the victim; monitoring electronic communications; watching and spying. It also includes a “catch all” “acting in any other way that a reasonable person would expect would cause (the victim) to suffer fear or alarm”.

The provision resulted from a successful amendment by Rhoda Grant MSP. Ms Grant opposed the Scottish Government’s own proposed amendment, which was much more general. She argued that the specific approach would be more effective than that of the 1997 Act:

Action Scotland Against Stalking has made it clear that the approach that was taken in the Protection from Harassment Act 1997 in England and Wales, which does not name the crime of stalking, has kept stalking hidden in the same way as breach of the peace has done in Scotland. (...) By calling that behaviour stalking, we recognise it and mark it as unacceptable.<sup>18</sup>

Further background can be found in a [paper](#) published by the Scottish Parliament Information Centre (SPICe).<sup>19</sup>

### 5.2 Information and support for victims

The Scottish Government has information on support for stalking victims on the [Stalking: Support](#) pages of the [mygov.scot](#) website.

Police Scotland has advice for victims on the [stalking](#) page of its website, including an [online Stalking Form](#).

[Victim Support Scotland](#) has a helpline on 0345 6039213

People in Scotland can also contact the [National Stalking Helpline](#) on 0808 802 0300.

<sup>18</sup> Scottish Parliament Justice Committee 2010, col 2835. Further background can be found in the [Written Submission to the Scottish Parliament’s Justice Committee by Action Scotland Against Stalking, CUJ/S2/11](#)

<sup>19</sup> Frazer McCallum, [Criminal Justice and Licensing \(Scotland\) Bill: Stage 3](#), SPICe Briefing 10/35, June 2010, pp15-6

## 6. Northern Ireland

### 6.1 The law

Northern Ireland has the [Protection from Harassment \(Northern Ireland\) Order 1997](#) (SI 1997/1180/N.I. 9, as amended) which is similar to Protection from Harassment Act 1997. However, it does not include specific stalking offences.

Before the Northern Ireland Assembly was dissolved in January 2017, its Justice Committee conducted a review [Review of the Need for Stalking Legislation in Northern Ireland](#) from November to December 2016. The Northern Ireland Assembly's Research and Information Service produced a [background briefing paper](#) providing detailed comparative information about the law in England and Wales, Scotland, Northern Ireland and the Republic of Ireland.<sup>20</sup>

Northern Ireland does not have a specific criminal offence of stalking, although the Northern Ireland Assembly's Justice Committee was reviewing this.

### 6.2 Advice for victims

The Police Service Northern Ireland provides information on [Harassment and Stalking](#), including a leaflet, [Stalking and harassment: advice and information](#).

Victim Support Northern Ireland provides practical help and information for victims on their [Help for victims: Stalking](#) page.

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<sup>20</sup> Northern Ireland Assembly Research and Information Service, [Legislative Position on Stalking and Relevant Statistics in the UK and the Republic of Ireland](#), Paper 20/17. 16 January 2017

## Appendix: The campaign to change the law in England and Wales

In November 2011, [Protection Against Stalking](#) (PAS) published the results of research into victims' experiences.<sup>21</sup> The report collected the views of over 140 victims and showed considerable dissatisfaction with the way the criminal justice system dealt with victims of stalking. It found that stalking victims had little confidence in the system, with two thirds of those who contacted the police being unhappy with the way officers and the Crown Prosecution Service handled their cases.

### The Independent Parliamentary Inquiry

A PAS campaign, in conjunction with the National Association of Probation Officers, included advising a backbench parliamentary inquiry into the problem of stalking led by the chair of the Justice Unions' Parliamentary Group.

The inquiry was led by the then MP Elfyn Llwyd and the panel included parliamentarians from the Commons and the Lords. The resulting report was published in February 2012.<sup>22</sup> Its recommendations included the introduction of a specific offence of stalking to replace section 4 of the *Protection from Harassment Act 1997*.

### Coalition Government consultation

In November 2011, the Coalition Government launched a [consultation](#) on whether or not there should be changes to the law, including a separate offence of stalking.<sup>23</sup>

### The Prime Minister's announcement (March 2012)

On 8 March 2012, at a reception marking International Women's Day, the then Prime Minister, David Cameron, announced that a separate criminal offence of stalking would be introduced.<sup>24</sup>

Yvette Cooper, the then Shadow Home Secretary, called for the Government to make "rapid progress" by backing a Labour amendment to the *Protection of Freedoms Bill*.<sup>25</sup>

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<sup>21</sup> Protection Against Stalking, [Stalking and harassment: the victim's voice](#), 10 November 2011

<sup>22</sup> [Independent Parliamentary Inquiry into Stalking Law Reform Main Findings and Recommendations](#), February 2012

<sup>23</sup> Home Office, [Consultation on stalking](#), November 2011; The Government's [response](#) was published in July 2012 – after the *Protection of Freedoms Act 2012* had received Royal Assent – see section 3 of this Paper. The response noted that the 1997 Act had now been amended.

<sup>24</sup> Number 10 Downing Street, [Transcript: International Women's Day 2012](#), 8 March 2012

<sup>25</sup> ["Stalking to be made specific criminal offence – Cameron"](#), BBC News, 8 March 2012

## Amendments to the Protection of Freedoms Bill

The shadow Leader of the House, then Baroness Royall of Blaisdon, moved amendments in committee<sup>26</sup> and on report<sup>27</sup> which were based very closely on the Scottish offence.

The Government amendments introduced in the Lords were designed to introduce a separate criminal offence of stalking but not quite in the way recommended by the Justice Unions' Parliamentary Group's Inquiry recommended. Instead of replacing the more serious section 4 offence with the offence of stalking, the Government proposed introducing two new offences to sit alongside the two existing harassment offences.

The changes were different from what the Independent Parliamentary Inquiry had recommended in that:

- the new offence of stalking would only be triable either way (and therefore liable to the longer sentences which the Crown Court could give) if it involved a fear of violence
- the section 4 harassment offence would still be on the statute books

When the amendments were introduced in the Lords during the third reading debate of the *Protection of Freedoms Bill*, Baroness Royall moved amendments which (as the Parliamentary Inquiry had proposed) would have made the lesser offence of harassment triable either way, and replaced the section 4 offence of harassment with a new stalking offence.<sup>28</sup> The then Home Office Minister, Lord Henley, acknowledged that fear of violence might not cover all the trauma suffered by victims of more serious cases of stalking, and promised to bring forward further amendments when the Bill returned to the Commons.<sup>29</sup>

When the Bill returned to the Commons for Consideration of Lords Amendments on 19 March 2012, the Government tabled amendments to extend the scope the more serious offence in new section 4A.<sup>30</sup>

The result would be that there would be a triable either way offence of stalking in cases where this had caused **either** fear of violence **or** serious alarm or distress which had a substantial adverse effect on a person's usual day-to-day activities.

Elfyn Lwydd, who had chaired the independent inquiry on stalking, said he was "delighted" with the outcome.<sup>31</sup>

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<sup>26</sup> [HL Deb 6 December 2011 c648](#)

<sup>27</sup> [HL Deb 6 February 2012 c75](#)

<sup>28</sup> [HL Deb 12 March 2012 c21](#)

<sup>29</sup> [HL Deb 12 March 2012 cc25-6](#)

<sup>30</sup> See [House of Commons Notices of Amendments given up to and including Thursday 15 March 2012](#)

<sup>31</sup> [HC Deb 19 March 2012 c554](#)

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