

## Stalking Protection Bill HL Bill 145 of 2017–19

### Summary

The [Stalking Protection Bill](#) is a private member's bill introduced in the House of Commons by Sarah Wollaston (Conservative MP for Totnes). It seeks to protect members of the public from risks associated with stalking. It would do this by creating a new civil stalking protection order (SPO) which—on application by the police to a magistrates' court—would impose prohibitions and requirements on the perpetrator.<sup>1</sup> Any breach of the terms of the SPO would result in a criminal offence.<sup>2</sup> The territorial extent of the bill would apply to England and Wales only.

The SPO has been designed to apply in situations where existing interventions are not always applicable, such as 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.<sup>3</sup>

The bill was introduced in the House of Commons on 19 July 2017, had its second reading on 19 January 2018, committee stage on 9 July 2018, and both the report stage and third reading, with government support, on 23 November 2018. It was introduced in the House of Lords on 26 November 2018 by Baroness Bertin (Conservative) and is due to have its second reading on 18 January 2019. The explanatory notes to the bill have been provided by the Home Office, with the consent of Baroness Bertin.<sup>4</sup>

### Legislative and Policy Background

Section 1 of the Protection from Harassment Act 1997 (1997 Act) prohibits a course of conduct amounting to harassment which, if carried out, can give rise to a civil or criminal penalty. Under section 7 of the 1997 Act, references to harassment include alarming or causing the person distress. Section 4 of the 1997 Act creates a criminal offence of carrying out a course of conduct which puts people in fear of violence. The Protection of Freedoms Act 2012 amended the 1997 Act to introduce two new stalking offences. The first, new section 2A, created an offence of stalking through pursuing a course of conduct amounting to harassment and stalking. This offence is triable in a magistrates' court and punishable by imprisonment for a term not exceeding six months and/or a fine. The second, new section 4A, created an offence of stalking which involves the fear of violence or serious alarm or distress. This offence can be tried in either a magistrates' court or a crown court, but if tried in a crown court, it initially carried a maximum penalty of five years' imprisonment and/or an unlimited fine. However, in 2017, the Policing and Crime Act 2017 increased this to ten years.

There are also a range of offences that can be used in cases where stalking, harassment or abuse is taking place online, including offences under the: Malicious Communications Act 1988; Computer Misuse Act 1990; Protection from Harassment Act 1997; Criminal Justice and Public Order Act 1994; and Communications Act 2013.<sup>5</sup>

From 5 December 2015 to 29 February 2016, the Government ran a public consultation, [Introducing a Stalking Protection Order—A Consultation](#), to explore whether the introduction of a new civil stalking protection order would offer further protection to victims of stalking generally and, in particular, victims of ‘stranger stalking’. For example, a patient becoming fixated on their doctor or other health professional; an individual becoming fixated on a work colleague; or originating from an online interaction.<sup>6</sup> The Government said:

Data from the CPS [Crown Prosecution Service] on prosecutions commenced indicates that around 70% of stalking cases took place in a domestic violence and abuse context. A survey of just over 1000 victims by the University of Leicester in 2005 indicated that around half of the sample had a prior intimate relationship with the person who became their stalker. The Electronic Communication Harassment Observation Survey of 353 victims (in 2011) found that in 22% of the cases, the stalker was a complete stranger to the victim and in 21% merely an acquaintance. The results also showed that 18% of cases developed from casual relationships and stated that only 40% of cases involved a close relationship that had gone awry.<sup>7</sup>

In response to the consultation, the Government published [Introducing a Stalking Protection Order—A Consultation: Summary of Responses](#) in December 2016. In this the Government stated the responses highlighted that there was a “gap” in the protections available and that there was “support” for a new SPO. Accordingly, the Government would legislate “as soon as parliamentary time allows” to “address the legislative gap and allow the police and the courts to intervene early”.<sup>8</sup>

In July 2017, in a joint report [Living in Fear—the Police and CPS Response to Harassment and Stalking](#), Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) and Her Majesty’s Crown Prosecution Service Inspectorate (HMCPISI), commented that stalking “was misunderstood by the police and the CPS” and as a result “often went unrecognised”.<sup>9</sup> The report said that police “sometimes mis-recorded stalking offences, or worse, did not record them at all” and “prosecutors on occasions missed opportunities to charge stalking offences, instead preferring other offences, particularly harassment”.<sup>10</sup> In particular, there was “not an exhaustive definition of stalking in legislation” and this was one of the “main reasons why there is a lack of common understanding about which actions can be counted as stalking” because presently “identifying stalking is frequently a matter of subjectivity, which can lead to error and/or omission, as we found in our case file review”.<sup>11</sup> HMICFRS and HMCPISI argued that “as a result, we consider the harassment and stalking legislation should be reviewed to ensure it is as effective as possible in protecting victims of stalking and bringing perpetrators to justice”.<sup>12</sup>

## **Main Provisions of the Bill**

Clause 1 of the bill relates to applications for SPOs. The order would be available on application to a magistrates’ court if it appears to the chief officer of police that:

- the person against whom they wish to obtain an SPO had carried out acts (in any part of the UK, or abroad) associated with stalking;
- they pose a risk of stalking to another person (whether or not this person was the victim of the acts. For example, if connected people, such as family members, friends, or co-workers,

- are being stalked, to affect the principal subject, defined as ‘stalking by proxy’); and
- that the order is necessary to protect the other person from that risk.

As an SPO would be a preventative order, it could prohibit the defendant from doing something, as far as is necessary, to protect the other person from risk of stalking. For example:

- entering certain locations or 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; or
- physically approaching the victim at all or to within a specified distance.

It could also require the defendant to do something, as far as is necessary, to protect the other person from risk of stalking such as attending a perpetrator intervention programme; attending a mental health assessment; or participating in a restorative justice process.

In particular, the bill provides that the acts associated with stalking upon which the application is found can have been “carried out before or after the commencement”<sup>13</sup> of the relevant provisions in the bill, and whilst the bill does not define stalking, it relies on a non-exhaustive list of examples of acts associated with stalking as set out in section 2A of the Protection from Harassment Act 1997 such as, in particular circumstances:

- 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; or
- g) watching or spying on a person.<sup>14</sup>

Clauses 2–4 relate to the powers of the magistrates’ court, namely that the court is satisfied the defendant has carried out such acts, poses a risk to the other person, and it is necessary to make a SPO for a duration of at least two years or until a further order is made, as well as providing it powers to vary, renew and discharge a SPO.

Clauses 5–6 allow the magistrates’ court to make an interim stalking protection order (ISPO) which would provide protection for the victim whilst the application for the SPO under clause 1 was being determined. An added proportionality requirement in an ISPO would be to avoid conflict with the defendant’s religious beliefs, or their work or educational obligations so far as practicable.

Clause 7 provides a route to appeal the magistrates’ decision to the Crown Court.

Clause 8 makes a breach of a SPO without reasonable excuse (a court to decide what constitutes a reasonable excuse in a case) a criminal offence punishable by a prison sentence and/or an unlimited fine

in either a magistrates' court or in the Crown Court. Clauses 9–10 impose notification requirements on the defendant to give their name and address (and any subsequent changes) to the police by attending the local police station. Clause 11 similarly makes breaching reporting requirements a criminal offence punishable by a prison sentence and/or an unlimited fine.

Clause 12 requires the Secretary of State to issue and publish guidance to the police about the exercise of their functions under this bill.

## House of Commons Stages

### *Second Reading*

The bill had its second reading on the 19 January 2018. Introducing the bill, Sarah Wollaston said:

Stalking is an insidious form of harassment, characterised by fixation and obsession. The relentless nature of the unwanted contact from perpetrators, which sometimes continues for many years, can make it feel completely inescapable. It is often directed not only at the intended victim, but at all those around them—their family, friends, neighbours and colleagues. It can seriously affect both the physical and the mental health of victims, leaving them feeling isolated and fearful. It can also escalate, as we know, to murder and rape. It is much more common than many people realise. About one in five women and one in ten men will experience some kind of stalking behaviour in their adult lifetime, according to the crime survey for England and Wales. However, it typically takes about 100 episodes of stalking for victims to come forward.<sup>15</sup>

The Shadow Home Secretary Diane Abbot confirmed that Labour MPs would give “wholehearted” support to the bill,<sup>16</sup> and said:

Stalking can be an extremely serious offence that has been exacerbated by the rise in online communication. The victims are usually women who are vulnerable to the actions of resourceful and obsessive perpetrators, and there are often links with domestic violence. The crimes can be horrific. They can combine physical and online stalking, late-night phone calls, and even home invasion. Threats of rape and murder are frequent and all too often credible. I understand that in the case of the man who murdered our colleague Jo Cox, when people went to his home they saw that he had a whole room papered with pictures of Jo, so we need to remember that this type of obsessive attention not necessarily will, but can, end in physical violence.<sup>17</sup>

Victoria Atkins, Parliamentary Under Secretary of State at the Home Office, said:

Stalking is an issue of great importance to the Government. The bill will provide the police with a vital additional tool to protect the victims of stalking and to deter perpetrators at the earliest opportunity. The onus will be on the police, not the victims, to bring in the orders. That is so important. I know that the honourable [Labour] Members for Rotherham (Sarah Champion) and for Batley and Spennings (Tracy Brabin) are concerned about this. Importantly, the orders will have the flexibility to impose both positive and negative requirements on stalkers. I hope that will address the concerns of my honourable Friends the [Conservative] Members for Torbay (Kevin Foster) and for Cheltenham [(Alex Chalk)] in that, where appropriate, the court will be able to require the stalker to have a psychiatric assessment. There is also the vital criminal penalty if the stalker

dares to breach the court order, which I hope will provide the safety and comfort that I know victims so desperately need.<sup>18</sup>

### **Committee Stage**

During the committee stage of the bill on 9 July 2018, a minor amendment was made by Sarah Wollaston to the long title of the bill, which she said would “better reflect the content of the bill”.<sup>19</sup> It now reads: “make provision for orders to protect persons from risks associated with stalking; and for connected purposes”. Other matters discussed were: exploring the possibility of the British Transport Police and the Ministry of Defence police being able to apply for stalking protection orders; a stalking register; the College of Policing’s guidance on stalking and harassment; and a stalking training programme for police officers.

### **Report Stage and Third Reading**

The bill had its report stage and third reading on 23 November 2018. A few minor amendments were agreed at report stage. For example, Sarah Wollaston moved amendments that would allow the chief constable of the Ministry of Defence police and the chief constable of the British Transport Police to apply for stalking protection orders and interim stalking protection orders.<sup>20</sup> This, she explained, was because stalking “occurs across a range of contexts and situations” and a SPO should be available to the police in a variety of situations, such as circumstances in which the “British Transport Police or MOD police are best placed to seek an order” if the “stalking conduct has taken place on the railway network or a perpetrator lives or works in MOD premises”. Additionally, Dr Wollaston moved amendments relating to notification requirements on a person subject to a SPO, requiring them to notify the police in advance of any changes of name or address.<sup>21</sup> The bill was read a third time and passed on 23 November 2018.

### **Reaction to the Bill**

The Suzy Lamplugh Trust said that the bill “must be supported by appropriate training for police officers” and that “all criminal justice professionals must be able to recognise concerning patterns of behaviours and the malicious intent that accompanies stalking”.<sup>22</sup> The Alice Ruggles Trust—a charity aimed at raising awareness of coercive control and stalking—stated it was “delighted that the Stalking Protection Bill has passed its report stage and third reading in the House of Commons”.<sup>23</sup>

### **Further Information**

- House of Commons Library, [Stalking: Developments in the Law](#), 21 November 2018
- Suzy Lamplugh Trust, [Out of Sight, Out of Mind: An Investigation into the Response to Stalking](#), 2016
- Suzy Lamplugh Trust and the National Stalking Consortium, [Out of Sight, Out of Mind—Two Years On](#), 2018
- House of Commons Home Affairs Committee, [Domestic Abuse](#), 22 October 2018, HC 1015 of session 2017–19
- Crown Prosecution Service, [‘Stalking and Harassment’](#) 23 May 2018

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<sup>1</sup> [Explanatory Notes](#), p 2.

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

<sup>4</sup> [Explanatory Notes](#).

<sup>5</sup> Home Office, [Introducing a Stalking Protection Order—A Consultation](#), December 2015, p 10.

<sup>6</sup> *ibid.*, p 5.

<sup>7</sup> *ibid.*, p 8.

<sup>8</sup> Home Office, [Introducing a Stalking Protection Order—A Consultation: Summary of Responses](#), 7 December 2016, p 10.

<sup>9</sup> Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) and Her Majesty's Crown Prosecution Service Inspectorate, [Living in Fear—the Police and CPS Response to Harassment and Stalking](#), July 2017, p 7.

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

<sup>13</sup> [Clause 1 \(5\)\(b\) of the Stalking Protection Bill](#).

<sup>14</sup> Section 2A of the Protection from Harassment Act 1997.

<sup>15</sup> [HC Hansard, 19 January 2018, col 1229](#).

<sup>16</sup> *ibid.*, col 1243.

<sup>17</sup> *ibid.*, col 1242.

<sup>18</sup> *ibid.*, col 1244.

<sup>19</sup> [Public Bill Committee, Stalking Protection Bill, 9 July 2018, session 2017–19, 1st sitting, col 3](#).

<sup>20</sup> [HC Hansard, 23 November 2018, cols 1147–8](#).

<sup>21</sup> *ibid.*

<sup>22</sup> Suzy Lamplugh Trust, '[What is the Stalking Protection Bill?](#)', accessed 10 December 2018

<sup>23</sup> Alice Ruggles Trust, '[Stalking Protection Bill Passes its Third Reading](#)', accessed 10 December 2018.

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