



BRIEFING PAPER

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The Protection from Harassment Act 1997

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Summary

England and Wales

The [Protection from Harassment Act 1997](#) was originally introduced to deal with the problem of stalking. However, it deals with a much wider range of behaviour, including behaviour which alarms or distresses the victim.

The Act gives both criminal and civil remedies. There are two criminal offences:

- pursuing a course of conduct amounting to harassment;
- a more serious offence where the conduct puts the victim in fear of violence

Harassing a person includes alarming the person or causing the person distress.

A “course of conduct”, which can include speech, must normally involve conduct on at least two occasions. There are special provisions to cover harassment targeting two or more people to persuade (for example certain kinds of protest action against companies) and harassment of an individual carried out by two or more people.

In addition to the criminal offences, a civil court can impose civil injunctions in harassment cases as well as awarding damages to the victim for the harassment. Breach of such an injunction is a criminal offence.

In 2012 the Coalition Government added two specific criminal offences of stalking to the 1997 Act following widespread concern that the Act was not dealing adequately with this problem. Further information on this is available in a Library Briefing Paper on [Stalking](#).

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

Scotland

Scotland is covered by [separate sections in the 1997 Act](#). Key differences are:

- they don't provide for a specific criminal offence of harassment (although the police could prosecute perpetrators using the common law offence of breach of the peace)
- there are special rules for harassment amounting to domestic abuse, where conduct on just one occasion can count.

Northern Ireland

Northern Ireland has very similar provisions to those sections of the Act which extend to England and Wales. These are set out in the [Protection from Harassment \(Northern Ireland\) Order 1997](#). Key differences are:

- The Order doesn't include the specific stalking offences
- It doesn't include the special provisions for harassment of two or more people, or for harassment of an individual by two or more people

1. England and Wales

1.1 Why was the Act introduced?

The Conservative government of the time originally consulted on proposals which led to the Protection from Harassment Act 1997 as a way of dealing with the problem of stalking.¹ However, the legislation was drafted to deal with a much wider set of behaviours, and to protect victims “whatever the source of harassment – so-called stalking behaviour, racial harassment, or anti-social behaviour by neighbours.”²

1.2 What does the Protection from Harassment Act do?

Section 1 of the 1997 Act states that a person must not pursue a course of conduct which “amounts to harassment of another” and which “he knows or ought to know” amounts to such harassment.

Such conduct could lead to a criminal penalty (under section 2). It might also be the subject of a claim in civil proceedings (under section 3). A victim would not need to pursue both civil and criminal remedies – they might decide to pursue civil remedies where there was not enough evidence for a criminal prosecution, but perhaps enough to obtain a civil order.

In criminal cases, the matter must be proved beyond reasonable doubt. A lower standard of proof applies in civil proceedings where the matter must be proved on the balance of probabilities.

1.3 The meaning of harassment

Harassment is not specifically defined but section 7(2) of the Act states that “References to harassing a person include alarming the person or causing the person distress”.

A “course of conduct” is defined in section 7(3) as meaning conduct on at least two occasions.

1.4 Harassment targeting two or more people

The *Serious Organised Crime and Police Act 2005* amended the 1997 Act to ensure that it covered animal rights and other protesters targeting companies. Section 1 was left unchanged, but an extra prohibition was added in new section 1A.³ This was that a person must not pursue a course of conduct involving harassment of two or more persons where this was intended to persuade any person “not to do

¹ Home Office, Stalking - the solutions: a consultation paper, July 1996

² Lord Mackay of Clashfern, then Lord Chancellor, [HL Deb 24 January 1997 c917](#). Background is in Library Research paper 96/115, [Stalking, harassment and intimidation and the Protection from Harassment Bill](#), 13 December 1996

³ s125 *Serious Organised Crime and Police Act 2005*

something that he is entitled or required to do, or to do something that he is not under any obligation to do”.

The definition in section 7 was also amended - where the course of conduct harasses a single individual, it must take place on at least two occasions, but where it is directed against two or more people, it only has to take place on one occasion in relation to each.

For further background on the changes introduced through the 2005 Act, see the [Library Research Paper 04/89](#).

1.5 Harassment carried out by two or more people

The definition of a “course of conduct” in section 7 of the 1997 Act was amended by the *Criminal Justice and Police Act 2001* to make it clear that the Act protects an individual from collective harassment by two or more people. This closed a potential loophole where two or more people each carried out only one act of harassment. Crown Prosecution Service guidance explains this:

Section 7(3A) provides that conduct by one person shall also be taken to be conduct by another if the other has aided, abetted, counselled or procured the conduct. It makes it clear that a campaign of collective harassment by two or more people can amount to a “course of conduct”. It also confirms that one person can pursue a course of conduct by committing one act personally and arranging for another person to commit another act.⁴

1.6 Defences

The Act provides three possible defences to a charge or allegation of harassment. Where harassment has been proved, the defendant would have to show one of the following:

1. that the conduct was for the purposes of preventing or detecting crime;
2. it was pursued under an enactment or rule of law; or
3. in the particular circumstances the conduct was reasonable.

It is for the courts to decide whether the conduct was in fact reasonable in the circumstances.

1.7 Criminal offences

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.

⁴ Crown Prosecution Service legal guidance on [Stalking and Harassment](#).

triable in the magistrates' court. Conduct can include speech,⁵ so verbal harassment is covered.

There are three elements of the offence:

- there must be a "course of conduct", not just a single act (see above)
- it has to amount to harassment (which isn't defined, so the Act can be used quite flexibly)
- the person must know, or ought to know, that the conduct amounts to harassment.

For the last point, section 1(2) makes it clear that the person should know that the conduct amounts to harassment "if a reasonable person in possession of the same information" would think that it did.

Section 4 of the Act created 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 (doubled from five years from April 2017)⁶ or an unlimited fine, or both. If the jury in the trial find a person charged with this offence not guilty, they may nevertheless find him or her guilty of the lesser offence of harassment under section 2.

Section 5 gives a court sentencing a person convicted of an offence under section 2 or section 4 the power to make a "restraining order". This would forbid him from pursuing further conduct against the victim (or any other person named in the order) which amounts to harassment, or will cause a fear of violence. The order may have effect for a specified period or until a further order is made. It is an arrestable offence for a defendant to breach such an order without reasonable excuse.

[Section 5A](#), which was added by the Domestic Violence Crime and Victims Act 2004, allows for restraining orders on acquittal.

Section 3(3) to (9) of the 1997 Act makes it an arrestable criminal offence for a person, without reasonable excuse, to breach an injunction prohibiting harassment issued as part of the civil remedy set out in section 3 (see below). Conviction may result in imprisonment for up to five years, or a fine, or both.

Two new criminal offences of stalking were added as sections 2A and 4A to the 1997 Act by the *Protection of Freedoms Act 2012*. Further information on this is available in a Library Briefing Paper on [Stalking](#).

1.8 Civil provisions

Section 3 of the 1997 Act allows for a person to take civil proceedings in respect of harassment. This includes "apprehended" harassment as

⁵ Section 7(4)

⁶ [s175, Policing and Crime Act 2017](#)

well as actual harassment. It would be alleged perpetrator to prove that his conduct was reasonable in the circumstances.

In such civil proceedings the pursuer can seek a “non-harassment” order, and/or damages. A non-harassment order would contain whatever terms and conditions the court considered appropriate in the circumstances. As with ordinary injunctions and some domestic violence remedies, interim ‘non-harassment’ orders may be sought by a victim *ex parte* (ie without the appearance of the alleged harasser at court to defend the case made against him). Section 3(2) provides for damages to be available for (among other things) ‘any anxiety caused by the harassment and any financial loss resulting from the harassment’. Section 3(3) makes the breach of a non-harassment order a criminal offence, punishable in the magistrates’ court with up to 6 months’ imprisonment, and/or an unlimited fine, or in the Crown Court with up to five years’ imprisonment and an unlimited fine.

Section 12 of the *Domestic Violence, Crime and Victims Act 2004* amended the 1997 Act to provide for courts to be able to issue restraining orders to a defendant acquitted of an offence where the court considers it necessary to do so to protect a person from harassment from that defendant.

1.9 Other civil remedies

Other remedies such as injunctions ancillary to proceedings for trespass, trespass to the person, nuisance, personal injury or domestic violence may be relevant to those seeking protection from some types of harassment. Normally the ability to seek an injunction would be limited to the person(s) who actually suffered from the nuisance; however, social landlords may apply for an injunction where it can be shown that the tenant in question is in breach of a tenancy condition not to indulge in particular sorts of behaviour. An injunction may be “perpetual” (ie a final order) or “interlocutory”, which is an interim order pending the final outcome. An interlocutory order can, in an emergency, be obtained without the defendant being given notice of the proceedings (*ex parte*).

There can be considerable difficulties in obtaining an injunction in cases where the identity of the perpetrator is unknown to the victim. The police have only a limited role in investigating matters which fall outside the scope of the criminal law and in some cases there may not have been any behaviour which could give rise to criminal prosecution.

1.10 Sources of further information

Citizens Advice has a webpage with practical advice on [Taking action about harassment](#), as does [Victim Support](#).

The Crown Prosecution Service has published legal guidance on [Stalking and Harassment](#). This also contains some practical information – for example, advice on recording what has happened.

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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.⁷

A separate Library standard note, SN/HA/3207, [Legal help: where to go and how to pay](#) includes information about sources of legal advice.

⁷ College of Policing, [College work on stalking and harassment](#)

2. Scotland

2.1 The law

[Sections 8-10](#) of the Protection from Harassment Act 1997 cover Scotland.

The approach is not the same as in England and Wales. It was decided that the Act should not make harassment a statutory offence under Scots law. There was debate about this at the time, with some people arguing that there should be such an offence, and others arguing that the existing common law offence of “breach of the peace” would cover stalking and other forms of harassment.⁸ After devolution, the new Scottish Executive (as it then was) reviewed the law and consulted on changes.⁹ The Criminal Justice (Scotland) Act 2003 gave the police the power to arrest a person for breach of a non-harassment order without warrant.

There are special provisions for Scotland in the 1997 Act.

[Section 8](#) states that every individual has the right to be free from harassment. Accordingly, a person must not pursue a course of conduct which amounts to harassment of another and:

- is intended to amount to harassment of that person; and
- occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person.

Breaching this would give rise to a claim in civil proceedings, and this could result in:

- an award of damages
- an interdict (the Scottish equivalent to an injunction)
- a “non-harassment order” requiring the perpetrator to refrain from the conduct for a specified period.

Breaching the non-harassment order is a criminal offence under [section 9](#).

As in England and Wales, a course of conduct must involve conduct on at least two occasions, except in the case of domestic abuse.

The Domestic Abuse (Scotland) Act 2011 introduced special provisions in section 8(A) where the harassment amounts to domestic abuse. In these cases, harassment on just one occasion is sufficient to give rise to the protections under section 8.

2.2 Information and support for victims

Citizens Advice Scotland provides general advice on [taking action about harassment](#) and [Victim Support Scotland](#) offers support and has a helpline on 0345 6039213.

⁸ See Library Research paper 96/115, [Stalking, harassment and intimidation and the Protection from Harassment Bill](#), 13 December 1996, pp 25-27

⁹ Scottish Executive, Stalking and Harassment: A consultation document, 2000

3. Northern Ireland

3.1 The law

The Protection from Harassment Act 1997 does not cover Northern Ireland; at the time it was introduced as a Bill in the House of Commons, the Northern Ireland Office had only just finished consulting on introducing similar measures there.¹⁰

The [Protection from Harassment \(Northern Ireland\) Order 1997](#) (SI 1997/1180/N.I. 9, as amended) is very similar to Protection from Harassment Act 1997. [Article 3](#) prohibits pursuing a course of conduct which amounts to harassment of another and which the perpetrator “knows or ought to know” amounts to this. However, it doesn’t have an equivalent provision for dealing with the harassment of two or more persons (see section 1.4 above). [Article 4](#) creates the criminal offence of harassment, punishable by up to two years imprisonment and an unlimited fine on indictment,¹¹ and [article 6](#) the more serious offence of putting people in fear of violence, punishable by up to seven years and an unlimited fine on indictment. [Article 5](#) provides for the civil remedy. Restraining orders on conviction are covered by article 7 and restraining orders on acquittal, introduced by the Domestic Violence, Crime and Victims Act 2004, by [article 7A](#). A course of conduct is defined in [article 2](#).

Northern Ireland is not covered by the Protection from Harassment Act 1997, but has very similar legislation.

3.2 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 stalking – see their [Help for victims: Stalking](#) page.

¹⁰ Library Research paper 96/115, [Stalking, harassment and intimidation and the Protection from Harassment Bill](#), 13 December 1996, p29

¹¹ i.e. in the Crown Court sitting with a jury; if the offence is tried in a Magistrates’ Court, the maximum prison sentence is six months

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