

THE **LAW SOCIETY**
OF NORTHERN IRELAND



Committee for Justice

Call for views/comments on

CONTENT OF PROTECTION FROM STALKING BILL

Response of the Law Society of Northern Ireland

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RESPONSE

The Society welcomes the introduction of stalking legislation in this jurisdiction. It is interesting that its journey commenced in September 2016 when it was the subject of a review by the Justice Committee and was due to conclude in 2017, save for the suspension of the Assembly. A reference group established to contribute to the resumed review, following the re-establishment of Assembly business, usefully considered types of stalking behaviour and key aspects of the law to be reviewed which contributed to the content of the consultation launched in November 2018.

The post consultation evaluation overwhelmingly confirmed that the majority of respondents agreed there were gaps in the law which required to be addressed by the legislature. Importantly, more effective gathering of evidence was an issue for many including more resources being allocated for this task. Unfortunately, legislation cannot provide for this, but it is something which the Department must make available if the legislation is to have maximum effect. The Scottish system was favoured by the majority of respondents as it was comprehensive and particularly as psychologically abusive behaviour was included, demonstrating an understanding of control and power by stalkers. A list of behaviours that would amount to stalking was something sought by respondents, but that the list should not be exhaustive. This has been incorporated in the draft Bill and will be useful guidance as the new legislation beds in.

Effective training of police officers to fully understand the complexities of stalking and the risks posed to victims is of great importance, as well as understanding the powers to apply for protection orders.

The proposed Bill creates a specific offence of stalking to address behaviour or acts associated with stalking which are not currently available and this is welcomed by the Society. The Department have suggested that the introduction of stalking Protection Orders will be a key tool for the PSNI to allow them to intervene before conviction and address behaviours before they become entrenched or escalate in severity. They will also offer immediate protection from harm. Guidance associated with this power will be key to its effectiveness, together with a clear understanding of the difference between these orders and other existing protective orders. In addition, the Society suggest that adequate resources be made available to provide services to persons subject to such Orders to help them overcome their behaviour and avoid re-offending.

The Bill:

OFFENCES - Clauses 1 to 5:

Clause one creates the offence of stalking described as a person engaging in a course of conduct that causes another to suffer fear, substantial distress or be alarmed. The 'course' of conduct must have occurred on two or more occasions and types of conduct are listed although the list is not exhaustive which is in keeping with the view of the majority of respondents to the 2018 consultation. The provision for a NI resident living outside the jurisdiction engaging in this type of behaviour against someone in this jurisdiction is an interesting development and may be of limited application however that remains to be seen. The outlining of a defence to a stalking charge and the sentencing clauses are noted.

Clause two creates the additional offence of threatening or abusive behaviour. This covers behaviour and intention by an accused or recklessness as to impact and effect. The defence of reasonableness in the circumstances is a welcome balance. This offence, like stalking, appears to be broad enough to capture social media/internet behaviour which is welcome. The penalties on conviction are noted.

Clause three – The Society note the specific introduction of automatic special measures for complainants which is welcome although special measures is not new and has been available upon application to the trial judge. The Society anticipate that this automatic provision will aid complainants to feel more supported in giving their evidence.

It is noted in Clause five that these offences will be summary in nature thus removing the option for an accused to seek a jury trial. However, in some incidences there are prolonged and repeated offences of harassment by individuals. If the offence is purely summary in nature then the court will only have limited power to deal with the offender. If the status of the charge was hybrid as opposed to summary this would allow for sentencing to be appropriate with regard to prolonged and repeat offenders. The Society suggest that this be considered.

STALKING PROTECTION ORDERS – Clauses 6 to 17.

Clause six introduces stalking protection notices which were favoured by respondents. It is noted that these may be prohibitive or mandatory in nature and the non-exhaustive list of behaviours should also capture social media scenarios. The Society believes that the opportunity to include a requirement that an offender attends a programme or assessment to assist with their offending behaviour is a valuable addition, but there must be associated

resources available to provide this assistance. It is interesting that only the Chief Constable (Clause seven) may apply for such an order. No doubt this is to avoid duplication with other available protective measures which are complainant lead.

The issue of proportionality raised in Clause 8 to avoid interference with an accused's right to work, attend education or practice religion is seen as entirely proportionate. The duration of an order in Clause nine suggests it should be for a fixed period or until further order is made. A judge hearing an application for an order will be very aware of the article 8 rights of an accused and should not impose restrictions which will inhibit those rights. Clarity is required on whether these orders are civil applications as clause 13 provides that breach thereof is a criminal offence.

A rehabilitation period must be factored into the Protection from Stalking Bill as this will not be dealt with in existing legislation. The relevant period might be twelve months from the date that the original Order expires, although this may be influenced by any breaches of the Order during its term.

The Society has no issues with Clauses ten and eleven and are confident that the judiciary will take a proportionate approach to applications.

The guidance referred to in Clause seventeen is viewed by the Society as extremely important. It needs to be clear and unambiguous. Supporting documentation such as a practical tool kit for PSNI should assist with the introduction of this new power although it will require updating periodically as this area develops particularly with case law.

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