



Home Office

**A change to the Protection
from Harassment Act 1997:
Introduction of two new specific
offences of stalking**

A change to the Protection from Harassment Act 1997: introduction of two new specific offences of stalking.

Implementation Date: 25 November 2012

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Summary

1. This circular describes amendments to the Protection from Harassment Act 1997 (the 1997 Act) made by the Protection of Freedoms Act 2012 (PoF Act 2012).
2. The circular should be read together with the relevant provisions of the PoF Act 2012. These amendments will come into force on 25 November 2012.
3. The PoF Act creates two new offences of stalking and stalking involving fear of violence or serious alarm and distress, under sections 2A and 4A of the 1997 Act. The amendments also set out new police powers to enter and search premises (on provision of a warrant - section 2B) in relation to the 2A offence.
4. The new provisions introduced by the PoF Act 2012 are designed to address specific stalking behaviour as opposed to harassment more generally, which would include matters including neighbour disputes.

Background: The Protection from Harassment Act 1997

5. The Protection from Harassment Act 1997, which prohibits harassment, was brought into force on 16 June 1997, following which it has been amended several times. The legislation was always intended to tackle stalking, but the offences were drafted to tackle any form of persistent conduct which causes another person alarm or distress.
6. Section 1(1) of the 1997 Act states a person must not pursue a course of conduct:-
 - (a) which amounts to harassment of another, and
 - (b) which he knows or ought to know amounts to harassment of the other.
7. Section 7 of the 1997 Act provides that references to 'harassment' include alarming a person or causing the person distress and states that a 'course of conduct' in the case of conduct in relation to one person must involve at least 2 occasions, or in the case of conduct in relation to two or more persons, conduct on at least one occasion in relation to each of those persons.
8. The 1997 Act introduced two offences: a summary-only offence under section 2, which deals with conduct that amounts to harassment of another, and an offence triable either-way (i.e. summarily or on indictment), under section 4 which covers situations where the victim fears that violence would be used against them. For both offences a course of conduct must be proved.
9. Section 5 of the 1997 Act provides that a court may make a restraining order to prohibit a person convicted of any offence from doing anything specified in the order, in order to protect victims. Section 5A provides that a court may make such an order in respect of a person acquitted of any offence.

10. The 1997 Act also introduced a civil remedy under section 3 for an actual or apprehended breach of the prohibition of harassment in section 1(1).

New Offence of Stalking (Section 2A)

11. Section 2A of the 1997 Act prohibits a person from pursuing a course of conduct that amounts to stalking. Although stalking is not specifically defined in the 2A offence, stalking is a particular type of harassment and can include a pattern of persistent and repeated contact with, or attempts to contact, a particular victim. Section 2A (3) lists examples of behaviours associated with stalking. (See paragraph 13).
12. Under Section 2A(1), A person is guilty of an offence if:–
- (a) person pursues a course of conduct in breach of section 1(1) of the 1997 Act (i.e. a course of conduct which amounts to harassment); and
 - (b) the course of conduct amounts to stalking.
13. For the purposes of subsection (1)(b) and section 4A(1)(a), section 2A (2) states that a course of conduct amounts to stalking of another person if:–
- (a) it amounts to harassment of that person (section 7(2) of the Protection of Harassment Act, references to harassing a person include alarming the person or causing the person distress);
 - (b) the acts or omissions involved are ones associated with stalking, and
 - (c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person.
14. Section 2A (3) lists examples of behaviours associated with stalking. The list is not an exhaustive list but gives an indication of the types of behaviour that may be displayed in a stalking offence. The listed behaviours 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.
15. A person guilty of the offence of stalking is liable on summary conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding level 5 on the standard scale, or both.
16. The new 2A offence does not specify how to demonstrate a defence for stalking. This is because an offence of stalking can only be established where an offence of harassment has occurred.
17. Section 2 offence does not have a defence for the charge of harassment. Therefore, both section 2 and 2A will have to rely on section 1(3), which states that the prohibition on harassment does not apply to a course of conduct if the person who pursued it can demonstrate the matters set out in section 1(3)(a) or (b) or (c).
18. Section 1(3) of the 1997 Act provides that a course of conduct will not amount to harassment if the person who pursued it shows:–
- (a) that it was pursued for the purpose of preventing or detecting crime. (This defence is most obviously available to the police, or other statutory investigating agencies);

- (b) that it was pursued under any enactment or rule of law, or to comply with any condition or requirement imposed by any person under any enactment; or
- (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

New Police Power Of Entry In Relation To Offence Of Stalking (Section 2B)

19. Section 2B sets out new police powers to enter and search premises in relation to the 2A offence:-

- (1) A justice of the peace may, on an application by a constable, issue a warrant authorising a constable to enter and search premises if the justice of the peace is satisfied that there are reasonable grounds for believing 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
 - (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.

(2) a constable may seize and retain anything for which a search has been authorised under subsection 2B (1).

(3) a constable may use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.

New Offence Of Stalking Involving Fear Of Violence Or Serious Alarm Or Distress (Section 4A)

20. Section 4A of the 1997 Act prohibits a course of conduct relating to the offence of stalking involving fear of violence or serious alarm or distress.

21. The first arm of the offence prohibits a course of conduct that causes the victim to fear, on at least two occasions that violence will be used against them (which is similar to the existing section 4 offence).

22. For the purposes of section 4A, (b)(i) a person (A) ought to know that A's course of conduct will cause another B to fear that violence will be used against the other person on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.

23. The second arm of the offence prohibits a course of conduct which causes "serious alarm or distress" which has a "substantial adverse effect on the day-to-day activities of the victim". It is designed to recognize the serious impact that stalking may have on victims, even where an explicit fear of violence is not created by each incident of stalking behaviour.

24. The phrase 'substantial adverse effect on the usual day-to-day activities' is not defined in section 4A, and thus its construction will be a matter for the courts via judicial interpretation. However, the Home Office considers that evidence of a substantial adverse effect when caused by the stalker may 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.
25. Although some victims try to continue their existing routines in defiance of a stalker, they may still be able to evidence substantial impact on their usual day-to-day activities, depending on the individual case.
26. For the purposes of section 4A (b)(ii), A ought to know that A's course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress.
27. There is a defence to stalking involving fear of violence or serious alarm or distress, as set out in Section 4A(4), where it can be shown that the course of conduct was:-
- (a) pursued for the purpose of preventing or detecting crime, or
 - (b) the conduct was pursued under any enactment or rule of law;
 - (c) the pursuit of A's course of conduct was reasonable for the protection of A or another or for the protection of A's or another's property.
28. A person guilty of an offence under section 4A is liable:-
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both; or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.
29. If on the trial on indictment of a person charged with an offence under section 4 or 4A the jury find the person not guilty of the offence charged, they may find the person guilty of an offence under sections 2 or 2A respectively.
30. Further information
- (a) The Protection of Freedoms Act 2012 (and explanatory notes),
 - (b) Linked Circulars: this circular is linked to the Home Office circulars 34/1997 and 28/2001
 - (c) The Protection of Freedoms Act 2012 (Commencement No. 2) Order 2012,
 - (d) Protection of Harassment Act 1997,
 - (e) Police and Criminal Evidence Act 1984.
31. All the above Acts of Parliament are available at the website: www.legislation.gov.uk
32. Charging codes are attached at Annex A.

Annex A: Charging codes

195/12 – S2A(1) Pursue course of conduct in breach of S.1(1) which amounts to stalking. (CJS: PH97006)

S 8/65 - S.4A(1)(a)(b)(i) Stalking involving fear of violence (CJS:PH97007)

S 8/66 - S.4A(1)(a)(b)(ii) Stalking involving serious alarm/distress (CJS: PH97008)

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