



Scotland: Stalking Legislation

The Scottish campaign was launched by campaigner Ann Moulds in the spring of 2009 and gathered momentum involving lobbying SMPs, officials, pressures groups, government departments and third sector organisations, over a 12 month period. Ann launched the campaign as she had been the victim of stalking and it was not recognised in law. At the time it was dealt with under Breach of Peace as an open, catch all offence, which did not recognise stalking and ensured stalking remained hidden, despite it being a serious crime.

Changes to the law were drafted in February 2010 and after adjustments and rewrites, were accepted by the government in the late summer of that year. The legislation was passed in December 2010, creating a specific offence of stalking. Ann described how she saw the offence of stalking as a two part crime. The first part was the offender's behaviour incorporating real and/or cyberstalking. The second was the impact on the victim, which she described as a subjective test.

Criminal Justice and Licencing (Scotland) Bill (2010)

The new legislation 'the offence of stalking' was introduced on 15 December 2010. Two amendments were incorporated into the Criminal Justice and Licencing (Scotland) Bill.

- The first, Clause 38, created an offence of putting someone in fear, alarm or distress, to catch all public and private behaviour. The clause requires a lower test of evidence and is essentially a catch all.
- The second, Clause 39, creates the specific offence of stalking, which is more serious. If the evidence is not considered strong enough then the police must consider the lower test, the safety net of Clause 38. Under the terms of this clause a person commits an offence, which will be known as **stalking**, where he or she stalks another person.

The **stalking** occurs where the perpetrator engages in a course of conduct AND that conduct causes the victim to suffer fear or alarm. The clause applies where the perpetrator knows, or ought to know, in all circumstances that engaging in the course of conduct would be likely to cause the victim to suffer fear or alarm.

Conduct is defined as follows:

- Where the perpetrator follows the victim or he/she contacts or attempts to contact the victim by any other person and through any other means;
- Where the perpetrator publishes any statement or other material relating to the victim;
- Where the perpetrator monitors the victim through the internet, email or any other form of electronic communications;
- Where the perpetrator enters the premises of the victim, loiters in any place private or public, interferes with any property and possession of the victim or any other person;
- Where the perpetrator gives anything to the victim or any other person or leaves an item that may be found by the victim; or
- Where the perpetrator watches or spies on the victim; and
- Acts in any other way that a reasonable person would expect a victim to suffer fear or alarm.

The Act concludes that the course of conduct must occur on two separate occasions. Ann Moulds in evidence to the Parliamentary Stalking Law Reform Inquiry said that on reflection there ought to have been a catchall *inter alia* (amongst other things) and an ability of the Secretary of State to add to the list if it became necessary. She said: 'At that time, in Scotland, there was no such crime as stalking. The police did not recognise the seriousness of the crime, the on-going predatory nature of this type of crime, or the increasing danger that I was facing'. In terms of

punishment, a person convicted on indictment under Clause 39 faces up to 5 years in prison. If it is a summary conviction it is a term not exceeding 12 months in prison. In the event of conviction, in either case, the person can also face a fine not exceeding the statutory maximum.

How many cases have been prosecuted under the new laws?

By April 2013 over a 1000 cases of stalking had been identified under the new laws and of these 761 had been referred to prosecutors.