

Proposed Stalking Protection (Scotland) Bill

Introduction

A proposal for a Bill to increase protection of victims of stalking by giving police the power to apply for stalking protection orders on behalf of victims. The consultation runs from 29 April 2019 to 21 July 2019. All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document. Questions marked with an asterisk (*) require an answer. All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response. Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded. Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here: [Consultation document](#) [Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice attached to this consultation which explains how my personal data will be used

About you

Please choose whether you are responding as an individual or on behalf of an organisation. Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

No Response

Please select the category which best describes your organisation

Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

Action Against Stalking (AAS) is a UK-wide charity based in Scotland which has pioneered the recognition of stalking as a specific criminal offence, has supported victims of stalking and has championed the rights of victims. The charity developed from the campaign 'Action Scotland Against Stalking', launched in 2009

Please select the category which best describes your organisation

by stalking victim Ann Moulds. This campaign led to the introduction of a specific offence of Stalking within the Scottish legal system through Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010. This development also pioneered a change in legislation in England and Wales in 2012 with recognition of the offence of stalking being ratified by the Council of Europe's Istanbul Treaty, in 2014. The work of ASAS contributes to 8 out of 16 of the Scottish Governments National Outcomes – crime, communities, young people, children, healthier lives, inequalities, public services and children, young people and families. ASAS will enhance the Scottish Government's proposed 'Equally Safe' strategy and strategic objectives of building a Safer and Stronger Scotland as well as developing a Healthier Scotland by reducing inequalities: Implementation of The Council of Europe's European Convention for Combatting Violence Against Women and Girls and the provision of specialized services for supporting victims of stalking; the successful implementation of the Scottish Governments Victim & Witnesses Act 2014 which recognizes stalking victims as vulnerable victims, and entitlement to Justice & Safety as outlined by the SCHR Scotland's National Action Plan for Human Rights.

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Action Against Stalking

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

Aim and approach

Q1. Which of the following best expresses your view of increasing protections for victims of stalking by giving police the power to apply for Stalking Protection Orders on behalf of victims?

Fully supportive

Please explain the reasons for your response, including any advantages and/or disadvantages of the proposed Bill.

Action Against Stalking (AAS) fully supports the introduction of Stalking Protection Orders into criminal law. Due to the ongoing and persistent nature of this crime, stalking victims are a particularly vulnerable cohort and often one of the most traumatised victims of crime.

Stalking episodes can last for months, even years. It is the chronic and compounding nature of the crime which can hold a devastating impact on the victims psychological, emotional, physical and financial health. In some cases, the stalking can escalate to other forms of serious violence such as physical/sexual assault, rape, and murder. Just because a stalker has never been violent in the past it doesn't mean given the right set of circumstances, they might not be violent in the future. Therefore every stalking case must be taken seriously with victim protection and safety at the forefront of investigations. Currently, there is very little to offer victims protection during and throughout the investigative of their case and due to the ambiguous and private nature of this crime, the gathering of evidence has proven to be one of the biggest

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challenges police officers face. Current gaps in our system in dealing with this crime offer very little in the way of protecting victims during the investigation of the case forcing them to seek their own protection through the civil courts, often at great cost and little effectiveness.

With an SPO a victim will no longer require to find their own lawyer. This is an advantage to many victims because lawyers fees can be expensive, and the cost may be prohibitive or act as a deterrent to those victims who cannot afford it.

The introduction of Stalking Protection Order (SPO) will provide police with a legal mechanism to protect the victims of this crime and deter perpetrators at the earliest opportunity and throughout the investigation of the case and in the absence of prosecution when victims may be their most vulnerable. They have the added advantage of being used where the criminal threshold has not been met but it is recognised that the acts are at risk of escalating. SPO will not only to protect victims and make them feel listened to, but will address patterns of behaviour in perpetrators before they become more entrenched and cause further psychological or physical harm.

An SPO order will the weight and gravity of a criminal court. Thus, this may cause some offenders to think twice before violating an order of the court. Although some offenders may have been involved with police and the judicial system a number of times, most offenders have not been issued a direct order from a judge stating that they shall not engage in certain conduct. This direct order from a judge may act as a deterrent.

Additionally, obtaining a restraining order can provide victims with peace of mind.

Just as there are certain valuable advantages there are also some disadvantages to this form of protection. However, it must be noted the advantages still out way the disadvantages. SPO will be effective when the stalker is rational and can control his/her behaviour to avoid legal consequences.

However, if offenders do not attach any meaning or value to the orders, chooses to ignore the orders with little regard for the consequences of his/her behaviour and is so obsessed with harming or harassing the victim, then SPO| will be of little value and totally ineffective. Research has highlighted in cases of ex partner stalking the issuing of a protection order has triggered the stalker to escalate to physical violence.

The issuing of a SPO may in some case provide victims with a false sense of security, therefore it is important for victims to understand that they should not rely solely on the use of the SPO. As aforementioned the most obvious and dangerous disadvantage is that the offender may simply ignore their terms and conditions and indeed escalate their behaviours, rendering the victim even more vulnerable and facing increased risk of harm.

It may be difficult to issue SPO if the offenders are difficult to locate, withhold their identity or are not known to the victim. The internet makes this easy. The effectiveness of SPO's relies on police having adequate resources and monitoring practices.

Q2. Which of the following best expresses your view of limiting Stalking Protection Orders to a maximum duration of two years, with the possibility of renewal by the court?

Fully supportive

Please explain the reasons for your response.

AAS fully supports the proposal of limiting a SPO to a maximum duration of two years, with the possibility of renewal by the court. The crucial aspect of the SPO is the 'safe space' it affords a v victim and in order for victim to get the most out of the breathing space afforded to them which an SPO can offer, but it needs to last for enough time to enable them to make any changes the feel they need to make; and even if they decide not to make changes the order needs to last long enough for a situation to calm and for additional protective measures to be put in place. Notwithstanding the above, we propose the SPO remains in place until either the case goes to trial, or there is an acquittal.

Q3. Which of the following best expresses your view of making the breach of a Stalking Protection Order a criminal offence, with a maximum sentence of up to 6 months imprisonment and/or a fine on summary conviction, and up to 5 years imprisonment and/or a fine for conviction on indictment?

Partially supportive

Please explain the reason for your response.

Whilst we support the proposed sanctions for the breach of a SPO, we are concerned they may be used instead of investigating the actual crime which is stalking which was what the victim complaint about in the first place. Police do not always respond appropriately when stalkers breach a protection order. Through our work in supporting victims of stalking and drawing from anecdotal evidence it is not uncommon for victims to complain their stalker has breached a protection order protection, sometimes on multiple occasions. it was not taken seriously and the police failed to act. In cases where there has been more than one violation of a protection order, two things are evident. There is a clear course of conduct as defined by the 'Offence of Stalking' and an indication true intent of the stalker is to pursue their victim despite legal constraints placed on them by a court of law. From this perspective repeated violations of protective orders, then, constitute stalking. Even the first violation of a protection order constitutes stalking. In other words, because the original series of events that caused the victim to seek help, may fit the legal definition of the crime. For this reason, we propose that more than one violation of an SPO is classed as a course of conduct that instils fear and alarm in the victim which fits the criteria of sec 6 j under the "Offence of Stalking" and should be prosecuted as such.

Q4. Which of the following best expresses your view of allowing a Stalking Protection Order to be made against a child (i.e. under the age of 16 and above the age of criminal responsibility in Scotland)?

Fully supportive

Please explain the reasons for this response.

AAS supports the view an SPO should be made against a young person under the age of 16 years old. The Equality Act 2010 protects children, young people and adults against discrimination, harassment and victimisation in relation to housing, education, clubs, the provision of services and work. AAS believes the introduction of an SPO would strengthen and improve equality outcomes of the Equalities Act 2010. The Scottish Governments legal framework Respect for All: The National Approach to Anti-Bullying for Scotland's Children and Young People states quite clearly young people should be protected from harm and abuse.

According to research carried out in Australia in 2009, and the only research available to study adolescent stalking stated 'Threats and physical assaults occur in a majority of these cases and the impacts of adolescent stalking mirror those reported by adult victims, .Adolescent stalking: offence characteristics and effectiveness of (<https://aic.gov.au/publications/tandi/tandi369>)

The researchers went onto report, the plight of pupils who are being stalked and criminally harassed is often ignored because parents, schools and police think that they are simply being bullied, researchers say."

Stalking is not just a legal concern but also a public health priority due to the significant social, economic, physical, and psychological consequences for the victims, Yet, despite a vast literature addressing problems and consequences of stalking, the majority of the research has been restricted to adults. In fact, a pervasive trend in the literature on adolescent stalking is to note the lack of literature on adolescent stalking.

As aforementioned, the only piece of research available was carried out in Australia as far back as 2009. Researchers interviewed teenagers who had been convicted of stalking in Australia - 64% were male and 69% of their victims were female. Three out of four had repeatedly approached their victims and 67% used telephone calls and text messages. Three-quarters had threatened their target and 54% had physically or sexually assaulted them.

The research published in the British Journal of Psychiatry highlighted the seriousness of juvenile stalking and its strong links to bullying. The study was based on interviews with 299 teenagers convicted of harassment, concluded the link between bullying and stalking has been ignored. It reported: "Juvenile stalking is characterised by direct, intense, overtly threatening and all too often violent forms of pursuit. Bullying, retaliation and rejection were among the main reasons for juvenile stalking, with sexual predation accounting for just 5% and infatuation for 2%.

Three-quarters of the victims reported being threatened.

These ranged from veiled threats such as "watch your back", to explicit threats to harm, rape or kill.

They also often recruited their friends as accomplices to the stalking.

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In 15% of cases, threats of violence had been made against the victim's family or friends as well. It states, "The stalking was an extension of bullying or a reaction to a perceived injustice including sexual rejection. The stalking behaviours by children and teenagers tend to be significantly more violent than that carried out by adults. It goes on to state, The academics found aggressive behaviour that in adults might trigger police investigations is "trivialised" when it happens to teenagers, but they are more likely to come to physical harm at the hands of a stalker, Stalking - Defined as repeated harassment over weeks or months, which can include physical threats could have a worse effect on adolescents than on adult The seriousness that is afforded to adult forms of stalking should similarly apply to this behaviour among juveniles, given the greater rates of disruption to the victim's life and risks of being attacked warning the impact on young people as worthy of serious concern given the critical phase in their psychosocial development," For the victims of persistent bullying, surely applying an SPO against bully stalkers would be some way to bring a swift end to their victims suffering. Whilst criminalising young people is not the most favourable method of recourse, for its victims, it might be the only recourse and means of protection especially when "in house" techniques traditionally employed by workplaces and schools (such as warnings or counselling), have failed to curb the behaviour. Please note our response to question 6 with reference to bullying and harassment and the Equality Act 2010.

Financial implications

Q5. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly cost-neutral	Some reduction in cost	Significant reduction in cost	Unsure
(a) Government and the public sector, including the police and courts		X				
(b) Businesses					X	
(c) Individuals					X	

Please explain the reasons for your response.

The effect of stalking on a victim carries a high price – life, children, jobs, belongings, safety, and trust. Instructed to relocate and change identities, survivors suffer long-lasting emotional and social effects. The nature of the crime and the impact on the victim has the potential to produce a large drain on criminal justice resources, the health care system, and employment within the workplace. Stalking could also lead to costly legal proceedings against employers if appropriate measures are not put in place to protect employees. Without a cost benefit analysis this is a difficult question to answer given there is a lack of empirical research on the short and long term impact of stalking. To gain a true measurement on the impact of this crime, further studies are essential to help quantify the cost of stalking to work productivity of victims, the impact on victims and their families, and the economic cost to society as a whole and the devastating consequences when lives are destroyed.

Equalities

Q6. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation?

Positive

Please explain the reasons for your response.

As mentioned in question 4 The Equality Act 2010 protects children, young people and adults against discrimination, harassment and victimisation in relation to housing, education, clubs, the provision of services and work. AAS believes the introduction of an SPO would strengthen and improve equality outcomes of the Equalities Act 2010 and the Human Rights of Scottish Citizens.

Stalking affects a huge number of people, both men and women, but women are still much more likely to be victims of this crime. This is yet another example of gender inequality and another reason why women are more likely than men to fear for their own safety.

Bullying and Harassment and Stalking exists within our communities, our personal life's, our workplaces colleges, schools and universities. The terms 'bullying' and 'harassment' are often used interchangeably. However, whilst the former does not appear in the Equality Act 2010, which focuses specifically on harassment, it must be added neither does Stalking, which as well as a crime within its own rights, has also been used as an interchangeable term with harassment.

Employers have a duty of care to provide a safe working environment for their employees, yet for a victim who experiences stalking within their working environment, the work place becomes less than safe. Being stalked within the work place may impact upon a victim's ability to work in a variety of ways. Initially, stalking behaviours can often severely directly interfere with their ability to leave their home and get to work regularly (extreme methods include frightening the victim to stay home through threatening emails, messages or phone calls, through to vandalising their car or making the commute difficult).

Most organisations have policies to deal with violence and harassment within the work place, but it could be argued very few if any have specific policies to deal with stalking. Stalking is not Harassment. Stalking has a different mode, motive and perspective. It is the fixated and obsessional nature of this crime that differentiates it from other forms of harassment. Clearing up the conceptual confusion that exists between these two similar but completely different concepts is crucial if we are to fully address the nature of this crime and what it does to its victims.

Through a lack of stalking awareness, understanding and specific stalking protocols employers may be overlooking their responsibility to offer effective management and protection for victims

Secondly, the stalker can make the workplace appear to be unsafe for the victim by targeting their messages to the workplace rather than just the victim's home. By threatening to appear at the workplace (at any time) the stalker gives the workplace an additional air of unpredictability. Thirdly, the psychological impacts reduce the overall workability of the victim, making them anxious, forgetful, unable to concentrate, and possibly disorganised.

An advantage of the of an SPO would help employers identify a stalking situation and encourage them to ensure its effective management. Not only will ensure increase protection for the victim, but will protect employers from the possibility of potential litigation as well reducing impact on the victims health and well being thus maintaining performance and, decreased absence rate

A disadvantage to the introduction of an SPO is where it is used inappropriately. An example would be false victimisation.

False claims of victimisation is not an uncommon phenomenon within the stalking world and constitutes part of the stalking behaviour. The stalker will quickly make allegations against the true victim in an attempt to discredit them to the police, and if successful have them charged and prosecuted stalking or harassment or Breach of the Peace. From a policing perspective and given the private nature of the crime, they often act against the true victim without fully investigating whether there is any basis to the allegation. Playing the victim is a well know stalking behaviour.

We have supported victims who have ended up in a court of law charged with a Breach of the Peace because their stalker has got" in their first '

Article 6 of the Human Rights Convention, is one of our most celebrated and important rights as it protects the right to a fair trial It states that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". Similar to Police Information Notices, it might be just as difficult for a true victim who has been falsely accused and charged to challenge or appeal against the issuing of an SPO.

The Bill proposes police apply for a SPO on behalf of the victim, however research states that in some cases the issuing of a protection order can trigger the stalker to escalate their behaviours. Not only might victims be unable to manage the increased risk, but in some cases victims have been murdered after getting a

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protection order. 21% of cases, violence and stalking escalate after the protective order is issued. (B. Spitzberg,(2002) "The Tactical Topography of Stalking Victimization and Management," Trauma, Violence, and Abuse, Vol. 3, No. 4, (2002), 261-288.)

Q7. In what ways could any negative impact of the Bill on equality be minimised or avoided?

If the SPO is implemented it will be important for authorised officers to conduct a full and proper risk assessment and consider the needs of the individual and their personal circumstances before applying for a SPO. Police officers need to ensure that any action taken is proportionate to and balanced against any risks posed, either to the individual or the wider community. This includes the seriousness of the offence, past history, the consequences of non-compliance and the likely effectiveness of the various enforcement options. It has outlined the need for a consistent yet flexible approach to the application of the PSPO, which must be tailored to the individual's needs and circumstances

Sustainability

Q8. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Yes

General

Q9. Do you have any other comments or suggestions on the proposal?

This is an ideal opportunity to consider amending the stalking legislation the " Offence of Stalking' to identify and accommodate the violation of SPO on two or more occasions as an act of stalking and prosecuted under such.