

THE STALKING PROTECTION ACT 2019

The Stalking Protection Order

Stalking has become a serious infringement of the lives of both women, men, young girls and boys. One in five women and one in ten men are likely to be victims in their lifetime and the prosecution for stalking offences demonstrates a rising trend in offending.

Professional advisers have found themselves the victim of such conduct too, either by former clients or those effected by their advice: they are now entitled to the same protection afforded by the new powers here described as other victims of this pernicious crime.

From 20 January 2020 the police have two new weapons in their arsenal to help combat stalking; a stalking protection order (SPO) and until one which has been applied for is determined, an interim SPO (s.1)

The onus is no longer on the victim to obtain an injunction.

The application can be made if it “appears” to the police that (i) the defendant has carried out acts “associated” with stalking or (ii) the defendant poses a risk “associated” with stalking to another person AND (iii) there is reasonable cause to believe the proposed order is necessary to protect another person from such a risk **(whether or not the other person was the victim of the acts referred to in (i) above)** (s.1(1))

The SPO can be without limit of time or of fixed duration but if the latter, it must be for at least two years from the date of the order itself. (s.3(1)) An interim order must be of a fixed duration and expires no later than on the date an SPO is made. (s.5(6))

The risk associated with stalking may be physical or psychological harm and may arise if the defendant knows or ought to know the conduct is “unwelcome” to the other person even if to others it would appear to be harmless. (s.1(4))

The court can impose conditions that the defendant must act (a requirement- eg to attend a mental health assessment or rehabilitation programme, or to be tagged) and/or not act (a prohibition –eg not to visit a person’s place of work or go within a certain distance of his/her address) if it concludes it is necessary in order to protect the other person from the risk associated with stalking and unless limited to a particular area such conditions apply throughout the United Kingdom. (s.2(2))

There is a requirement on the court “as far as practicable” not to impose conditions that conflict with the defendant’s religious beliefs or interfere with any times the defendant normally works or attends an educational establishment. (s.2(3))

As to the workplace where the defendant and person to benefit from the SPO work at different locations for different employers an issue should not arise. If the two

share the same workplace an employer should have an anti-stalking policy or procedure to offer support. This is consistent both with the health and safety obligations to the employee but also so as not to permit any frustration of an SPO; although there is no obligation under the Act on the defendant employee to disclose that he or she is the subject of an SPO.

Where the victim works with the defendant interference with the defendant's work is inevitable and the employer will have to take steps to ensure that the defendant employee does not breach the terms of the SPO eg different rotas or making sure there need be no contact between the two or making sure that the defendant is in fact working where he has been designated to work.

Although the order is obtained in the magistrates court by means of a civil complaint, a breach of an SPO or interim SPO is a criminal offence punishable on summary conviction by up to 12 months imprisonment or a fine or both and on indictment by up to 5 years imprisonment or a fine or both. (s.8(2))

It is a piece of legislation that bucks the trend of the principle that the law should not ordinarily be retrospective. This new power with its attendant punishments for any breach is retrospective; the conduct complained of can therefore pre-date the Act. (s.1(5)(b))

Furthermore, although the orders only apply to the United Kingdom an application for an order can in fact be based on conduct that hitherto has only occurred outside the jurisdiction. (s.1(5)(a))

Thus, if the defendant (as he or she will be classed) stalked the victim in Spain but moves to the United Kingdom and the court is satisfied that an order should be made to protect the victim here, then even if no stalking has occurred in the United Kingdom, an order can be made if the risk assessment favours such a course.

In fact an order can be made to protect an individual who the defendant has never stalked (see s.1(1) above) but who the court is satisfied should be protected in the light of the defendant's stalking of another.

The defendant to any application has no right to appear to object; the orders are obtained ex parte. The defendant's remedy is to apply to the magistrates court for an order to vary or discharge the SPO (there is no right to appeal against an interim order) (s.4(1)); there is also a right to appeal to the Crown Court. The police can appeal to the Crown Court if the lower court fails to grant what it has applied for. (s.7)

Within three days of service of the order the defendant must notify the police of his/her address and name (or names if more than one is used) and if a new name or names are subsequently used or there is a change of address notify the police of those matters within 3 days of their occurring. (s.9(2-4))

Where notification is given to the police (by attending a police station) the defendant "must" if requested by the police or an authorised person allow the police officer or person (i) to take his/her fingerprints (ii) photograph "any part" of the defendant or

(iii) do both of the above if for the purpose of verifying the identity of the person. (s10(5-6)).

Failure without reasonable excuse to comply with the notification/request or provides false information, is a criminal offence; the penalties are the same for any breach of the order itself. (s.11(2)) Furthermore, a prosecution can be commenced “in any court having jurisdiction” and “in any place where the person charged is found or resides”. Absconders beware. (s.11(6))

These new powers, hopefully bolstered by appropriate police training as to their application, shifts the burden of seeking protection from the victim to the state and provides a long-awaited reform in the fight against conduct that has blighted and continues to blight the lives of thousands.

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