

Proposed Stalking Protection (Scotland) Bill

A proposal for a Bill to increase protection for victims of stalking by giving police the power to apply for stalking protection orders on behalf of victims

**Consultation by Rona Mackay MSP
Member for Strathkelvin and Bearsden**

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FOREWORD by Rona Mackay MSP



Recorded incidences of stalking have almost doubled in the last five years¹ and the rise of cyber-stalking, through social media and mobile phone apps, shows no signs of abating.² It is widely recognised that stalkers can have a profound effect on their victims, both mentally and physically, and that stalking behaviour can culminate in serious violence.³

The dramatic rise in stalking offences since 2012 has led to calls, from victims of stalking and relevant stakeholders, for victims of these crimes to be given greater protection.

A survey by the Scottish Government in 2017/18 found 27% of women aged 16-24 had experienced at least one incident of stalking in the previous year. Overall 11% of adults experienced at least one type of stalking and harassment in 12 months.⁴

Currently, individuals who are being stalked can apply to the court to have a Non-Harassment Order (NHO) taken out against a stalker. This means that the victim has to take legal action themselves, which can be costly and stressful, and the numbers of victims applying for NHOs has therefore been empirically low.⁵

Prosecutors can apply for an NHO once a stalker has been convicted. However, criminal cases take time to investigate and prosecute, leaving the victim to navigate a civil action at a particularly vulnerable time. In addition, if they do not qualify for legal aid, the cost is prohibitive.⁶

My proposal aims to give victims greater protection, and access to justice, by allowing the police to apply directly to the court for a Stalking Protection Order (SPO). The police will have to show that there is evidence of stalking behaviour and that they believe that there is a risk to the victim. An Order would then prohibit the stalker from continuing this behaviour.

Breaching an SPO would be a criminal offence, in the same way that breaching an NHO is a criminal offence. However, it is not my intention that SPOs would replace criminal convictions for the offence of stalking - for example, a breach of an SPO could help to

¹ <https://www.gov.scot/publications/recorded-crime-scotland-2017-18/pages/20/>

² <https://www.scotsman.com/news/uk/cyber-stalking-rising-as-a-third-of-victims-found-online-1-4098441>

³ 'No place to hide': stalking victimisation and its psycho-social effects

<http://usir.salford.ac.uk/40774/1/%27No%20Place%20to%20Hide%27%2C%20Stalking%20Victimisation%20and%20its%20psycho-social%20effects.pdf>.

⁴ <https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/>

⁵ Please see table on pg.10

⁶ <https://www.scotsman.com/news/politics/rising-number-of-domestic-abuse-victims-seek-harassment-orders-1-4246084>

provide evidence for an ongoing criminal investigation. The advantage of SPOs is that they would provide a quicker procedure for the protection of the victim.

The UK Parliament has recently passed the Stalking Protection Act 2019, which provides the police with powers to apply for SPOs for victims in England and Wales. It is imperative that victims who are stalked in Scotland have access to a similar level of protection.

Being a victim of stalking is frightening, distressing, often relentless, and can cause severe damage to victims' mental and physical well-being. SPOs would give the police an additional legal tool to increase protection for victims, which in turn may encourage more victims to report this pernicious crime.

A handwritten signature in black ink that reads "Rona Mackay". The signature is written in a cursive, flowing style.

Rona Mackay
April 2019

How The Consultation Process Works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

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Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me. An on-line copy is available on the Scottish Parliament's website (www.parliament.scot) under Parliamentary Business / Bills / Proposals for Members' Bills.

AIM OF THE PROPOSED BILL

Background

What is stalking?

Stalking is an insidious crime. A stalker's actions may, at first glance, seem innocuous or harmless but their consequence is to cause the victim to suffer fear and alarm. For example, an action such as sending a stalking victim flowers might, to an outsider, seem like a kind or a 'romantic' gesture. However, to the victim, the meaning behind those flowers might be "I know where you live" or "I know where you work".

Stalking is defined as "two or more behaviours directed towards a victim which cause, are intended to cause, or where the perpetrator's behaviour is reckless as to whether it causes, the victim to suffer fear and alarm".⁷ This can include stalking behaviour that is targeted at a victim's friends and family, in order to cause further distress to the victim. Police Scotland's guidance explains that "although each stalking situation is unique and stalkers may have different motivations, the tactics and techniques employed by each are often very similar" and might include⁸:

- Following someone or someone else who is associated with that person
- Contacting or attempting to contact a person by any means
- Publishing material about someone without their consent
- Monitoring someone's phone, internet, email or other form of communication
- Loitering in a public or private place
- Interfering with someone's property
- Leaving unwanted gifts or notes for someone
- Watching or spying on someone

It is also important to stress that although much of the media coverage of stalking describes obsessed fans stalking celebrities, the reality is that stalking affects many ordinary people just trying to go about their day-to-day lives. Young women, in particular, experience a higher than average level of repeated unwanted attention from an acquaintance, colleague, ex-partner or stranger.⁹

An example of this is the lived experience of Ann Moulds, founder of Action Against Stalking. Ann had a horrific personal experience with a stalker.

She says:

⁷ <https://www.legislation.gov.uk/asp/2010/13/section/39>

⁸ <https://www.scotland.police.uk/keep-safe/personal-safety/stalking>

⁹ <https://www.gov.scot/publications/scottish-crime-justice-survey-2014-15-sexual-victimisation-stalking/pages/4/>

“He was a predatory stalker who remained anonymous throughout his two year campaign of unrelenting terror and abuse. This man had forced himself into a delusional relationship me without my knowing or my consent. I knew he was watching me, he told me so. Eventually, too scared to go out, my home became my prison. Living with constant fear and anxiety took its toll. I didn’t think I would survive, and like a deck of cards, every aspect of my life started to crumble, and there was nothing I could do to stop it.”¹⁰

The impact of stalking

As seen from Ann Mould’s experience, stalking can have a severe, long-lasting and life-changing impact on victims.

Consequences can include:

- Nightmares, panic attacks, guilt, thoughts of hopelessness and suicide, flashbacks, loneliness, fear and terror;
- Difficulty maintaining or forming new friendships and romantic relationships because victims cannot easily trust other people or because stalkers would intimidate their new partners;
- Damaged relationships with their families, children, partners, friends and neighbours;
- Withdrawal from social life; and
- Financial ramifications, including costs resulting from taking legal action against their stalkers, changing homes, losing, reducing or quitting their jobs.¹¹

An example of the impact of stalking, from a victim who has spoken out about their experience, is Annette Hall. Annette wrote a letter to her stalker stating;

“You put me through the most soul destroying mental abuse and violation anyone could endure. My every move was logged, monitored and watched. My home, my work, anywhere I went you followed. It turns out you had been watching me for years. You invaded every aspect of my life. You threatened violence upon my family and friends. It evoked fear and terror.”¹²

Tragically, for some women, the obsessive behaviour of a stalker has ultimately led to the victim’s murder. In 2017 the University of Gloucestershire conducted a study,

¹⁰ Quote provided by the victim in an email to the Member

¹¹ 'No place to hide': stalking victimisation and its psycho-social effects, <http://usir.salford.ac.uk/40774/1/%27No%20Place%20to%20Hide%27%2C%20Stalking%20Victimisation%20and%20its%20psycho-social%20effects.pdf>.

¹² Quote provided in an email to the Member

published by the Suzy Lamplugh Trust, which found that 94% of female homicides “featured stalking in the year prior to the victim being killed.”¹³

This is a shocking statistic which shows that it is imperative that Stalking Protection Orders are introduced as a new legal tool available to the police, to halt stalking behaviour before it ever gets to this point.

Current legal context

Scotland

Harassment

Before it was recognised that stalking behaviour should constitute a specific criminal offence, stalking was prosecuted under common law offences, such as breach of the peace. Without a criminal conviction, the only protections available to stalking victims were (and still are) civil remedies under the Protection from Harassment Act 1997 (“the 1997 Act”).

The 1997 Act defines harassment as causing the person alarm or distress on at least two occasions. It allows victims to raise an action of harassment and, if the court agrees that the conduct amounts to harassment, can result in the victim being awarded damages and/or granted an interdict (a court order that can prohibit someone from doing something) or a Non-Harassment Order (NHO). The onus is on the victim to attempt to stop the stalking behaviour, with all the associated costs and stress that come with raising an action in court. NHOs are mentioned in more detail below in the ‘remedies for victims of stalking or harassment’ section.¹⁴

Stalking

The specific offence of stalking was created in 2010 by section 39 of the Criminal Justice and Licensing (Scotland) Act (“the 2010 Act”).¹⁵ The creation of an offence was the result of a campaign led by Ann Moulds, herself a stalking victim, who launched Campaign Action Against Stalking in 2009.¹⁶

Under the 2010 Act, a criminal offence occurs when a person engages in a course of conduct on at least two separate occasions, which causes another person to feel fear or alarm, where the accused person intended, or knew or ought to have known, that their

¹³ <https://www.suzylamplugh.org/news/national-stalking-consortium-response-to-sara-thornton-chair-of-npcc> and the full study is available at <http://eprints.glos.ac.uk/4553/1/NSAW%20Report%2004.17%20-%20finalsmall.pdf>

¹⁴ <https://www.legislation.gov.uk/ukpga/1997/40/crossheading/scotland>

¹⁵ <https://www.legislation.gov.uk/asp/2010/13/section/39>

¹⁶ <http://www.actionagainststalking.org/about-stalking-charity.html>

conduct would cause fear and alarm.¹⁷ Unlike more clear-cut types of crime (for example, house-breaking or assault), the actions that lead to the offence may seem innocuous and may in themselves be legal, for example, sending someone a gift. Whether the offence has been committed is dependent on whether the victim felt afraid.

The 2010 Act therefore not only created a criminal offence but built on the 1997 Act by providing a non-exhaustive list of examples of the types of conduct that could amount to stalking behaviour:

- following the victim or any other person,
- contacting, or attempting to contact the victim, or any other person,
- publishing any statement or other material—
 - relating or purporting to relate to the victim or to any other person,
 - purporting to originate from the victim or from any other person,
- monitoring the use by the victim, or by any other person, of the internet, email or any other form of electronic communication,
- entering any premises,
- loitering in any place (whether public or private),
- interfering with any property in the possession of the victim or of any other person,
- giving anything to the victim or to any other person or leaving anything where it may be found by, given to or brought to the attention of the victim or any other person,
- watching or spying on the victim or any other person,
- acting in any other way that a reasonable person would expect would cause the victim to suffer fear or alarm¹⁸

Within the media, the terms ‘stalking’ and ‘harassment’ are often used interchangeably to describe the same types of behaviour, such as those listed above. To avoid confusion, this document and the proposed Bill will use the term ‘stalking’ in line with the classification of the criminal offence.

¹⁷ <https://www.legislation.gov.uk/asp/2010/13/section/39>

¹⁸ <https://www.legislation.gov.uk/asp/2010/13/section/39>, section 39(6)

While the offence of stalking requires that the offender engages in a course of conduct, individual instances of threatening behaviour, may be prosecuted using the offence of ‘threatening and abusive behaviour’ under section 38 of the 2010 Act.

Incidences of stalking

Since the 2010 Act came into effect mid-way through 2010, the number of recorded offences of stalking has increased from 495 in 2011-12 (the first full year of the Act being in force) to 1,376 in 2017-18.

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Offence of stalking	122	495	605	875	1,251	1,435	1,372	1,376

Source: Recorded Crime in Scotland, 2017-18¹⁹

However, there is evidence that stalking remains under-reported. The Scottish Crime and Justice Survey (SCJS) 2017/18²⁰ found that the reporting rate for stalking and harassment is comparatively low when compared to other crimes. Among respondents to the SCJS who had experienced at least one incident of stalking and harassment in the last 12 months, only 9% said they had reported the most recent (or only) incident to the police.²¹

Although the survey found no statistically significant difference between the proportion of adult women and men who experienced at least one type of stalking and harassment (at 11.6% and 10.5% respectively), young people, particularly young women, experienced a higher than average level of stalking and harassment. Around one-in-five (19%) 16 to 24-year olds experienced at least one type of stalking in the last 12 months, and this was higher (26.9%) for women than men (12.1%) of that age-group.²²

Current remedies for victims of stalking or harassment

At present, if a victim goes to the police to report that they are being stalked, the police can investigate and pass to a prosecutor any evidence of the criminal offence of stalking. However, whilst the criminal investigation and case is ongoing, the only immediate remedy a victim has is to ask the court to grant an interdict or an NHO. An NHO can then prohibit the alleged stalker from behaving in a specified way for a length

¹⁹ <https://www.gov.scot/publications/recorded-crime-scotland-2017-18/pages/20/>

²⁰ <https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/>

²¹ [Page 8, Scottish Crime and Justice Survey 2017/18](#), Note that the survey asked whether the responder had reported the most recent (or only) incident to the police – so if a responder had experienced 5 incidents and reported the other four but not the most recent, their answer would be ‘no’.

²² <https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/>

of time set by the court (which can be an indeterminate period). Breaching the NHO is a criminal offence that carries a penalty of up to five years' imprisonment.²³

In practice, civil actions for NHOs are very rare. NHOs granted in the sheriff courts over a five year period appear in the table below (although a limitation of the statistics is that the NHO category relates to cases where an NHO is the main request in the court action).²⁴ For context, around 70,000 civil actions are initiated in the sheriff courts annually.²⁵

Financial year	Initiated	Disposed	Granted
2016-17	9	4	1
2015-16	6	4	4
2014-15	6	9	3
2013-14	20	8	6
2012-13	12	4	2
2011-12	13	4	2

In recognition that it is potentially expensive and stressful for victims of harassment to apply for an NHO through the civil court, the 1997 Act also allows a prosecutor to seek an NHO at the end of a criminal case,²⁶ in addition to any other disposal associated with the case. Such an NHO remains a civil order and the standard of proof is still “on the balance of probabilities.”

Originally, an NHO could only be sought by a prosecutor where a person was convicted of an offence involving the harassment of a person. However, the 2010 Act widened the range of offences under which a prosecutor could seek an NHO, following a conviction. Significantly, the requirement for a “course of conduct” (conduct on at least two occasions) was removed by the 2010 Act for NHOs in the criminal courts.

²³On conviction on indictment, the person in breach may be imprisoned for up to five years; be subject to a fine (with no maximum limit) or subject to both such imprisonment and fine. On summary conviction the person in breach may be imprisoned for up to six months; subject to a fine not exceeding £10,000 or to both such imprisonment and fine (1997 Act, section 9 and the Criminal Proceedings etc. (Reform)(Scotland) 2007 (asp 6), section 47).

²⁴ Information provided by the Scottish Government’s Justice Analytical Services by email on 21st November 2018, table provided by the Scottish Parliament Information Centre. Note: 1. The statistics shown relate only to the principal crave of cases; 2. The complexity of recording and reporting on civil law court cases means that in the tables the number of cases disposed of may be an underestimate; 3. The statistics shown for initiations and disposals do not necessarily refer to the same cases. This is because not all the cases initiated in a year will be disposed of in that same year; 4. The statistics show relate to the number of cases and may not necessarily equal the number of people seeking an order; 5. All the cases were heard in the sheriff courts.

²⁵ Scottish Government Supplementary Tables 2016-2017, Table S1: <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Datasets/DatasetsCJS/civi1617>.

²⁶ <https://www.legislation.gov.uk/ukpga/1995/46/section/234A>

Compared with civil actions, NHOs are more commonly used in criminal cases:²⁷

Financial year	Non-Harassment Orders granted in Scotland during criminal proceedings
2008–2009	33
2009–2010	47
2010–2011	49
2011–2012	101
2012–2013	183
2013–2014	386
2014–2015	640
2015–2016	938
2016–2017	1,032
2017–2018	1,299
2018-2019 (figures to Oct 18) ²⁸	793

The increasing number of NHOs being granted during a criminal case shows that NHOs are clearly a useful a tool for prosecutors. However, given the low level of civil actions for NHOs, it is clear that there is a gap in the law in instances where a perpetrator has not yet been convicted of a criminal offence, but the victim still needs protection.

England and Wales

In England and Wales, the specific criminal offence of stalking was created in 2012. Stalking victims in England and Wales also have civil legal remedies under the 1997 Act, in the form of injunctions and restraining orders.

However, as with the situation in Scotland, victims have to apply to the courts themselves, and a gap in the law was therefore identified. This led to the Stalking Protection Bill, a private member's bill, being introduced in the House of Commons by Sarah Wollaston MP in 2017.

The Stalking Protection Act 2019 (“the 2019 Act”)

When the Stalking Protection Bill was introduced, Ms Wollaston stated that its purpose was to provide for “better and earlier protection” for victims of stalking. There was cross-party support for the Bill, and it progressed through the Commons with only a few minor amendments, and through the House of Lords without amendment.

²⁷ Email from the Scottish Courts and Tribunal Service, dated 21st November 2018, table provided by the Scottish Parliament Information Centre

²⁸ 1 April 2018 – 31st October 2018.

The Stalking Protection Bill received Royal Assent on 15 March 2019 to become an Act of Parliament.²⁹

This means that once the Act comes into force, when victims in England and Wales report stalking to the police, the police will have the power to apply to the court for an SPO where they believe that the alleged stalker has carried out acts associated with stalking and poses a risk to the victim.

The court can then make an SPO where it is satisfied that (on the balance of probabilities) these acts have been carried out and the perpetrator does indeed pose a risk. In order to protect the victim, the order can then specify actions that the perpetrator is required to carry out or prohibited from carrying out.

Although proponents of the Bill made it clear that an SPO is not intended to replace criminal prosecutions for stalking,³⁰ it is intended to be a long-term remedy in England and Wales. The Act states that an SPO has effect for a period fixed in the order (which must be at least two years), or (if no such period is fixed) until a further order is made. The 2019 Act also makes provision for interim orders, designed to be granted where an application for an SPO has not yet been determined.

The Case For Stalking Protection Orders

The current system of NHOs gives legal protection to victims of stalking or harassment. This protection can be made available if the victim raises a civil action themselves, or if a prosecutor applies for one at the end of a criminal trial. However, as has been shown, almost all NHOs are used after a criminal case rather than through the civil route.

For most victims of stalking, the overwhelming priority will be for the stalking simply to stop. An NHO, which makes continued harassment a criminal offence, is a powerful tool to achieve this. But as things stand, pursuing an NHO through a civil court comes at considerable expense and could be emotionally challenging for victims at a particularly vulnerable time. The evidence that stalking is underreported compared to other crimes underlines this point. Ultimately, the figures speak for themselves, with only a very small proportion of victims attempting to pursue this approach.

A Stalking Protection Order (SPO) would serve the same purpose as an NHO, but would allow the police to apply to a civil court on a victim's behalf. It would prevent harassment from escalating or continuing. Just as in the case of an NHO pursued through a civil court, an application would be considered on the balance of probabilities and would give victims protection and security whilst police and prosecutors are building a criminal case.

²⁹ Available at: <http://www.legislation.gov.uk/ukpga/2019/9/contents/enacted>

³⁰ According to Sarah Wollaston MP <https://hansard.parliament.uk/commons/2018-01-19/debates/5790FBB0-8E5E-4FD1-AE3C-665095381180/StalkingProtectionBill#contribution-292EE24C-179A-46AB-8FB9-DEA4D3AB2D60>

It is not my intention that these orders would replace a criminal conviction of stalking. However, the advantage of SPOs is that they also give victims protection where police consider an alleged offender to be a genuine threat but where there is not yet enough evidence to pursue criminal charges. If stalking did continue, the breach of an SPO would, in itself, be a criminal offence, which could be useful to prosecutors.

Half (50%) of those surveyed in 2016/17 who experienced stalking and harassment in the previous 12 months had also experienced partner abuse in the same period.³¹ The Scottish Government has recently consulted on protective orders for people at risk of domestic abuse.³² SPOs could therefore play a crucial role in protecting victims whose ex-partners are continuing to stalk and harass them once the relationship has ended, and who therefore may not be covered by new domestic abuse protections.

This proposal would have a positive impact on victims of stalking by giving them faster access to a protective order through reporting stalking to the police, rather than having to apply to a court on their own behalf. This would eliminate the victim's legal costs and avoid the additional stress of undertaking legal action, as well as potentially providing for an earlier resolution. It would give stalking victims in Scotland similar protections to stalking victims in England and Wales, it would prevent stalkers' behaviour from escalating, and it would hopefully encourage more stalking victims to come forward, in the knowledge that something can be done to help them.

DETAIL OF THE PROPOSED BILL

My proposal is to introduce Stalking Protection Orders (SPOs) in Scotland, and to give the police the power to apply for SPOs on behalf of victims. These SPOs will be broadly similar to the SPOs that are now available to the police to protect stalking victims in England and Wales. However, there will also be a few key differences, which are set out below alongside the detail of my proposal.

Applying for SPOs

The proposed Bill would give the police the power to apply to the court for an SPO, where there was evidence that stalking behaviours had taken place and where they believed an individual was at risk of stalking.

The court could then make an SPO if it believed that the alleged stalker had both carried out actions associated with stalking and posed a risk to the victim (or a person known to the victim).

³¹ <https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/>, page 125.

³² https://consult.gov.scot/justice/people-at-risk-of-domestic-abuse/user_uploads/290884_sct1218171740-001_protective_p3.pdf

Due to the proposed duration of SPOs (set out below), I do not see the need for interim SPOs, which will be available to the police in England and Wales.

Content of SPOs

The SPO would contain either prohibitions or requirements for the alleged stalker to comply with. For example, an order could set out that a person must not contact a victim or visit their place of work. It would be up to the court in each case to determine the prohibitions and requirements necessary for the victim's protection.

Duration of orders

The starting point for this proposal is that the duration of an SPO would be set by the court introducing it, up to a maximum of two years.

It would, however, be possible for the SPO to be renewed, again for up to a maximum of two years, if this was considered necessary and proportionate. This would allow a fresh assessment to be made as to whether there was still a risk of stalking behaviour.

This would be a departure from the duration of SPOs in England and Wales. However, I consider that allowing an order to be made for up to a maximum of two years allows time for a criminal case to be built, whilst, for example, balancing the fact that an alleged stalker may yet to have been convicted of any offence "beyond reasonable doubt."

Varying, renewing or ending an order

The proposed Bill would give powers to the police and to the defender to request a variation, renewal or discharge of an order. This would allow the police (and the court) to take into consideration any new evidence that had come to light about the alleged stalking behaviour.

Appealing an order

Similar to the Westminster Stalking Protection Act, the proposed Bill would also give a right to the alleged stalker to appeal an order and give a right to the police to appeal the refusal of an order (or variation or renewal of an order) by the court.

Breaching an order

It would be a breach of an SPO for the recipient of the order to continue to behave in a manner that had been prohibited in an order, such as carrying out further unwanted communication with the victim. This might, for example, include behaviour that was not in itself would not otherwise be an offence but that was causing an individual to suffer fear and alarm. Similarly, it would be a breach of an order not to comply with any requirements set out in the order. The breach of an SPO would be a criminal offence.

The breach of an NHO is a criminal offence punishable by a prison sentence of up to six months and/or a fine for summary conviction and up to five years and/or a fine for conviction on indictment.³³ This is a useful benchmark and it is proposed that the Bill would match this level of punishment, meaning that the breach of an SPO was considered no greater or lesser an offence than the breach of an NHO. However, I am interested in people's views as to whether a five year maximum sentence would be appropriate for breach of an SPO, taking into consideration that the maximum sentence for the criminal offence of stalking is also five years.³⁴ Breaching an SPO in England and Wales carries a maximum sentence of 12 months on summary conviction, and I am therefore also interested in people's views as to whether the maximum sentence on summary conviction should be six months (like NHOs) or twelve months (as in England and Wales).

Notification requirements

The proposed Bill would contain provisions requiring the subject of an SPO to notify the police of their name, any aliases that they use, their current address, and any changes to their home address. This would ensure that a stalker couldn't continue to stalk a victim by using a different name or by changing their address so that they can't be found by the police. A failure to notify the police of these details would also be criminal offence, subject to the equivalent penalties as breach of the SPO.

Age of those subject to an SPO

I am also seeking views as to whether an SPO could be made against a child under the age of 16, in the same way that an Antisocial Behaviour Order can be made against a 12-15 year old child. The Antisocial Behaviour etc (Scotland) Act 2004 prohibits the detention of the child for breaching the order, with the sheriff instead able to refer the case to a children's hearing or make a parenting order. I would envisage these same protections being in the proposed Bill, if consultation responses suggest that SPOs should apply to children who are under 16 but above the age of criminal responsibility in Scotland.

Financial implications

The current extent to which stalking is under-reported is not fully known, although, as set out above, the most recent Scottish Crime and Justice Survey would suggest that it is significant. It is therefore difficult to assess the likely increase in reports of stalking to the police, if SPOs become available. In addition, I note that the Impact Assessment carried out for the Stalking Protection Bill in England and Wales found that "the provisions in the Bill would not create any additional public expenditure or require any changes to public service manpower."³⁵

³³ <https://www.legislation.gov.uk/ukpga/1997/40/section/9>

³⁴ [Section 39\(7\) Criminal Justice and Licensing \(Scotland\) Act 2010](#)

³⁵ <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0145/18145en.pdf>, pg. 10

It is anticipated that, should SPOs be introduced in Scotland, there would be an increase in the number of stalking victims contacting the police, as there will be greater assurance for victims that 'something can be done'. There would therefore be resource implications for the police in dealing with these cases and in applying for SPOs, although although there may be a certain number of perpetrators who would have previously been dealt with under NHO procedure. There would also be resource implications for the police and prosecutors (Crown Office and Procurator Fiscal Service) if subjects breach an SPO or fail to comply with the notification requirements. It is also anticipated that there may be some training costs for the police.

There is likely to be a knock-on effect for the Scottish Courts and Tribunals Service in processing and hearing applications for SPOs, and dealing with breaches of SPOs. Breaches of SPOs may also have financial implications for the Scottish Prison Service, if an offender is sent to prison for breaching an SPO.

There are likely to be financial benefits for victims of stalking, as the victim is less likely to suffer continuing harm and its subsequent impact on their wellbeing and employment. Victims would also not have to incur the costs of raising a civil action for an NHO. The police may benefit from a reduced need for more costly interventions if the course of conduct by the stalker had escalated to become more serious. Earlier intervention may also reduce the likelihood of a perpetrator's behaviour escalating or other offences being committed.

Equalities

It is noted that young people, and in particular young women, are disproportionately affected by stalking. In addition, around half of those surveyed who had experienced stalking, had also experienced partner abuse in the same period.³⁶ The proposed Bill is likely to impact these groups in particular.

Any prohibitions or requirements set out in an SPO would, so far as practicable, need to avoid conflict with the perpetrator's a) religious beliefs, and (b) interference with any times at which the defendant normally works or attends an educational establishment.

Otherwise there have been no particular positive and/or negative impacts of the proposal identified on any of the protected groups (under the Equality Act 2010) at this stage.

³⁶ <https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/>

Sustainability

A sustainable development impact assessment has been carried out and it is suggested that the proposed Bill can support sustainable development issues by increasing wellbeing, equity and access to justice. As above, it is noted that young people, and in particular young women, are disproportionately affected by stalking. In addition, around half of those surveyed who had experienced stalking, had also experienced partner abuse in the same period. The creation of SPOs is therefore likely to increase access to justice for these groups in particular.

SPOs will also allow victims of stalking to access their environments safely and without fear. It will reduce victims' fear for the safety of their friends and family, reduce the likelihood of victims having to give up employment (and the consequent financial stresses that this brings), and it will afford victims of stalking in Scotland a similar level of protection available to stalking victims in England and Wales.

SPOs will place restrictions on those carrying out stalking behaviour, including potentially limiting their access to local amenities or spaces that the victim frequents. However, it is considered that the benefits of protecting victims outweigh the restrictions placed on the perpetrator.

QUESTIONS

ABOUT YOU

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
- an individual – in which case go to Q2A
 - on behalf of an organisation? – in which case go to Q2B
- 2A. 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”.)
- Politician (MSP/MP/peer/MEP/Councillor)
 - Professional with experience in a relevant subject
 - Academic with expertise in a relevant subject
 - Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

- 2B. Please select the category which best describes your organisation:
- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
 - Commercial organisation (company, business)
 - Representative organisation (trade union, professional association)
 - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
 - Other (e.g. clubs, local groups, groups of individuals, etc.)

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).

3. Please choose one of the following:
- I am content for this response to be published and attributed to me or my organisation
 - I would like this response to be published anonymously

- I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. 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”.)**

Name:

Please provide 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. **(Note: We will not publish these contact details.)**

Contact details:

5. Data protection declaration

- I confirm that I have read and understood the privacy notice attached to this consultation which explains how my personal data will be used.

YOUR VIEWS ON THE PROPOSAL

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

Aim and approach

1. 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
 Partially supportive
 Neutral (neither support nor oppose)
 Partially opposed
 Fully opposed
 Unsure

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

2. 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
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

3. 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?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

4. 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
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed

- Fully opposed
- Unsure

Please explain the reasons for your response.

Financial implications

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

(a) Government and the public sector, including the police and courts

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(b) Businesses

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(c) Individuals

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

Equalities

6. 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, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response.

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

Sustainability

8. 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
- No
- Unsure

Please explain the reasons for your response.

General

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

HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/StalkingProtectionBill/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or at the end of this document.

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

Rona.mackay.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Rona Mackay MSP
M4.15
Scottish Parliament
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on (0131) 348 5789.

Deadline for responses

All responses should be received no later than **Sunday 21st July**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website <https://www.ronamackay.scot/>. Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The Privacy Notice (below) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The Privacy Notice (below) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The Privacy Notice (below) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspubliknowledge.info.

Privacy Notice

This privacy notice explains how the personal data which may be included in, or is provided with, your response to a MSP's consultation on a proposal for a Member's Bill will be processed. This data will include any personal data including special categories of personal data (formerly referred to as sensitive personal data) that is included in responses to consultation questions, and will also include your name and your contact details provided with the response. Names and contact details fall into normal category data.

Collecting and holding Personal Data

The Scottish Parliamentary Corporate Body (the SPCB) processes any personal data you send to it, or that the MSP whose consultation you respond to shares with it (under a data-sharing agreement) according to the requirements of the General Data Protection Regulation (EU) 2016/679 (the GDPR) and the Data Protection Act 2018 (the DPA)

Personal data consists of data from which a living individual may be identified. The SPCB will hold any personal data securely, will use it only for the purposes it was collected for and will only pass it to any third parties (other than the MSP whose consultation you respond to) with your consent or according to a legal obligation. Further information about the data protection legislation and your rights is available here:

<https://ico.org.uk/for-the-public/is-my-information-being-handled-correctly/>

Sharing Personal Data

The data collected and generated by Smart Survey will be held by the Non-Government Bills Unit (NGBU), a team in the Scottish Parliament which supports MSPs progressing Members' Bills, and shared with the MSP who is progressing the Bill and staff in the MSP's office. Data submitted by other means (e.g. by email or hard copy) will be held by the MSP's office and shared with NGBU for the purpose of producing a summary of responses to the consultation. The MSP and NGBU are joint data controllers of the data. Under a data-sharing agreement between the MSP and the Scottish Parliament, access to the data is normally limited to NGBU staff working on the Member's Bill/proposal, the MSP and staff in the MSP's office working on the Member's Bill/proposal; but data may also be shared by NGBU with the Scottish Parliament's solicitors in the context of obtaining legal advice.

Publishing Personal Data

"Not for publication" responses will not be published and will only be referred to in the summary of consultation responses in the context of a reference to the number of "not for publication" responses received and, in some cases, in the context of a general reference that is considered by you to be consistent with the reasons for choosing "not for publication" status for your response.

Anonymous responses will be published without your name attached, your name will not be mentioned in the summary of consultation responses, and any quote from or reference to any of your answers or comments will not be attributed to you by name.

Other responses may be published, together with your name; and quotes from or references to any of your answers or comments, together with your name, may also be published in the summary of consultation responses.

Contact details (e.g. your e-mail address) provided with your response will not be published, but may be used by either the MSP's office or by NGBU to contact you about your response or to provide you with further information about progress with the proposed Bill.

Where personal data, whether relating to you or to anyone else, is included in that part of your response that is intended for publication, the MSP's office or NGBU may edit or remove it, or invite you to do so; but in certain circumstances the response may be published with the personal data still included.

Please note, however, that references in the foregoing paragraphs to circumstances in which responses or information will not be published are subject to the Parliament's legal obligations under the Freedom of Information (Scotland) Act 2002. Under that Act, the Parliament may be obliged to release to a requester information that it holds, which may include personal data in your response (including if the response is "not for publication" or anonymous).

Use of Smart Survey software

The Scottish Parliament is licensed to use Smart Survey which is a third party online survey system enabling the Scottish Parliament to collect responses to MSP consultations, to extract and collate data from those responses, and to generate statistical information about those responses. Smart Survey is based in the UK and is subject to the requirements of data protection legislation.

Any information you send by email or in hard copy in response to a consultation on a proposal for a Member's Bill may be added manually to Smart Survey by the MSP's office or by NGBU.

The privacy policy for Smart Survey is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

While the collected data is held on SmartSurvey, access to it is password protected. Where the data is transferred to our own servers at the Scottish Parliament, access will be restricted to NGBU staff through the application of security caveats to all folders holding consultation data.

Access to, retention and deletion of personal data

As soon as possible after a summary of consultation responses has been published, or three months after the consultation period has ended, whichever is earlier, all of your

data will be deleted from Smart Survey. If, three months after the consultation period has ended, a summary has not been published, then the information that we would normally publish – including all your answers to questions about the proposal (unless your response is “not for publication”) and your name (unless you requested anonymity), but not your contact details – may be downloaded from Smart Survey to SPCB servers and retained until the end of the session of the Parliament in which the consultation took place. If the MSP lodges a final proposal, he/she is required to provide a copy of your response (unless it was “not for publication”), together with your name (unless you requested anonymity), but not your contact details, to the Scottish Parliament Information Centre (SPICe), where it may be retained indefinitely and may be archived.

Purpose of the data processing

The purpose of collecting, storing and sharing personal data contained in consultation responses is to enable Members to consider the views of respondents to inform the development of the Bill, with the support of NGBU. Personal data contained in consultation responses will not be used for any other purpose without the express consent of the data subject.

The legal basis

The legal basis for collecting, holding, sharing and publishing your personal data is that the processing is necessary for the performance of a task carried out in the public interest, or in the substantial public interest, in accordance with Art 6(1)(e) GDPR, s8(d) DPA, or Art 9(1)(g) GDPR, s10 of and paragraph 6 of Schedule 1 of the DPA. The task is the support of Members seeking to introduce Members’ Bills to the Parliament. This is a core task of the SPCB and therefore a Crown function. The adequate support of the Members Bill process and the ability to seek, use and temporarily store personal data including special category data is in the substantial public interest.

If the person responding to the consultation is under the age of 12 then consent from the parent or guardian of the young person will be required to allow the young person to participate in the consultation process (however, the legal basis for the processing of the personal data submitted remains as the public interest task basis identified above).

Your rights

Data protection legislation sets out the rights which individuals have in relation to personal data held about them by data controllers. Applicable rights are listed below, although whether you will be able to exercise data subject rights in a particular case may depend on the purpose for which the data controller is processing the data and the legal basis upon which the processing takes place. For example, the rights allowing for erasure of personal data (right to be forgotten) and data portability do not apply in cases where personal data is processed for the purpose of the performance of a task carried out in the public interest. The right to object to the processing of personal data for the purpose of a public interest task is restricted if there are legitimate grounds for the processing which override the interest of the data subject. This would be considered on a case by case basis and depends on what personal data is involved and the risks further processing of that data would pose to you. As described above, the collection,

storage, sharing and publishing of personal data contained in consultation responses is a task carried out in the public interest, which means that these three data subject rights do not apply here or only in a restricted scope.

Access to your information – You have the right to request a copy of the personal information about you that we hold.

Correcting your information – We want to make sure that your personal information is accurate, complete and up to date and you may ask us to correct any personal information about you that you believe does not meet these standards.

Objecting to how we may use your information – Where we use your personal information to perform tasks carried out in the public interest then, if you ask us to, we will stop using that personal information unless there are overriding legitimate grounds to continue.

Restricting how we may use your information – in some cases, you may ask us to restrict how we use your personal information. This right might apply, for example, where we are checking the accuracy of personal information about you that we hold or assessing the validity of any objection you have made to our use of your information. The right might also apply where this is no longer a basis for using your personal information but you don't want us to delete the data. Where this right is validly exercised, we may only use the relevant personal information with your consent, for legal claims or where there are other public interest grounds to do so. Please contact us in any of the ways set out in the *Contact information and further advice* section if you wish to exercise any of these rights.

Changes to our privacy notice

We keep this privacy notice under regular review and will place any updates on this website. Paper copies of the privacy notice may also be obtained using the contact information below.

This privacy notice was last updated on 28 June 2018.

Contact information and further advice

If you have any further questions about the way in which we process personal data, or about how to exercise your rights, please contact:

Head of Information Governance
The Scottish Parliament
Edinburgh
EH99 1SP
Telephone: 0131 348 6913 (Text Relay calls welcome)
Textphone: 0800 092 7100
Email: dataprotection@parliament.scot

Complaints

We seek to resolve directly all complaints about how we handle personal information but you also have the right to lodge a complaint with the Information Commissioner's Office:

- Online: <https://ico.org.uk/global/contact-us/email/>
- By phone: 0303 123 1113