

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.

an individual

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".)

Member of the public

Please select the category which best describes your organisation

No Response

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).

Alan Meechan

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 opposed

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

While would agree it could be seen as a scary time for victims, the whole emphasis on this Bill seem wrong and applying for overkill. As rightly pointed out there are provisions there at the moment under, Criminal Justice and Licencing (Sc) Act S.39, which is very specific to stalking. This creates the criminal charge, can be taken to criminal court and, prosecuted, if proven. This bill recognises that individuals and/or Crown could ask for NHO. While understand the cost implications on individuals, the legal test for NHO still must be "necessity". In other words is the order necessary. Bear in mind when an individual would apply for a NHO, it more often than not would be applying for a Power of Arrest as well. If applying for Power of Arrest, it would imply a criminal offence has already taken place. If not, a good chance court would refuse a Power of Arrest, as test of risk, safety, fear and alarm not meet. If these latter aspects are made out, the necessity part will also be made out an a NHO and Power of Arrest should be granted. What is proposed here is to give powers to police, which would breach Human Rights Act. The Bill suggests on an "alleged offender to be a genuine threat but where ... not enough evidence to pursue criminal charge." This therefore implies no criminal offence taken place, or the incident only happening once (which could be bad enough, but is this really stalking?). The Bill in what is proposed would breach numerous Human Rights of the other individual, which would leave the police open to court action against them for these breaches. The Bill appears very draconian and not necessary as the test and procedures there at present are sufficient to protect individuals from harm, risk and fear and alarm through criminal as well as civil courts. NHO & Power of Arrest can be for 3-5 years at a time, while the Power of Arrest would need to be justified again after 1 year. But if grounds there for fear and alarm, would suffice continuation. Therefore the current Bill seems not necessary nor does it meet the test or suggest a test of legal burden of proof.

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 opposed

Please explain the reasons for your response.

This is a draconian bill which give proposed powers to police for something which does not meet the criminal test. The current NHO and Power of Arrest already protect persons from further harm, fear and alarm. While costs can be an issue, it still implies criminal offence committed in first instance. The criminal test of two or more instances of behaviour must continue. Failing which, the Bill breaches Human Rights Act and leave police open to action for breach. The Criminal Justice and Licencing Sc Act S.39 covers this behaviour, as well as NHO & Power of Arrest. These can be for 3-5 years, review of Power of Arrest after

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?

one year. But this Bill is not compatible with human rights. It implies that a possible offence may have happened. This doesn't meet test for criminal burden of proof and would struggle to meet civil burden as well. Not a good bill.

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?

Fully opposed

Please explain the reason for your response.

There is no merits for a SPO there in first place, as breach of Human Rights Act. Bill doesn't meet legal test of criminal offence having been committed. But as protections for stalking specifically under other provisions, seem this SPO is overkill and covered under other legislation, which protects and meets legal tests for criminal offences. So the breach of anything amounting to criminal behaviour, implies two of more instances of behaviour which causes fear and alarm, is/would be covered under existing legislation.

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 opposed

Please explain the reasons for this response.

For similar reasons as given to whole idea of bill

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.

If Bill make it through parliament, it given extra work to police, which are really powers of investigation. But would increase work of police. Which in turn would increase work burden on court. There increasing costs

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

on public sector for wasted time by all . Effects on businesses and individuals not sure, as powers there already for individuals to apply.

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?

Neutral (neither positive nor negative)

Please explain the reasons for your response.

Don't see it really having effect on these issues, as all areas of police government already take into consideration

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

Could drop the bill.

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?

No

Please explain the reasons for your response.

As said above, this bill would not meet human rights act test so leave open possibility of actions against police.

General

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

See Bill as being not necessary for all reasons given