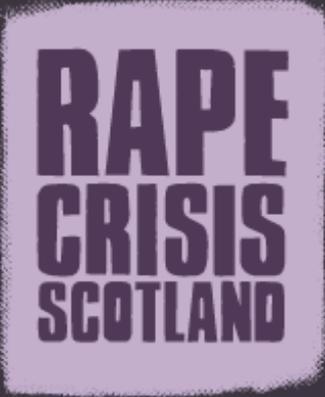




CONSULTATION

Proposed
Stalking Protection
(Scotland) Bill:
(2019)



**RAPE
CRISIS
SCOTLAND**

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)

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).

Rape Crisis Scotland

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.

Rape Crisis Scotland welcomes the opportunity to respond to the Scottish Government consultation to introduce Stalking Protection Orders (SPOs) to enhance the protection of victims/survivors of stalking.

Stalking is a serious crime which can have a devastating effect on victims/survivors who experience it. Failure to identify and address stalking can lead to escalation of risk (to the victim/survivor and people linked to them, such as children, friends and other family members). We believe that the current measures for protection of victim/survivors are inadequate for a number of reasons, some of which are highlighted below.

In our experience, stalking is an underreported and often poorly understood crime. Many of the survivors who are in touch with Rape Crisis Centres have been affected by stalking struggle to have their experiences recognised. The very nature of stalking means that individual acts viewed in isolation and taken at face value can sometimes present as non-criminal. As an example, loitering outside someone's house can often be dismissed as innocuous behaviour, yet it can cause significant fear, alarm and restriction of movement to the victim/survivor and any children they may have. Incidents which are not perceived to cause immediate risk can similarly be overlooked, such as social media posts which do not contain overt threats, or purport to come from someone else. Adequate resourcing and training for police and criminal justice professionals will therefore be essential to ensure that stalking is identified at the earliest opportunity, and for the potential impact of SPOs to be fully achieved.

Many individuals may not be aware that what they are experiencing is indeed stalking. There continue to be misconceptions about this crime, and many may think "stranger stalking" is the only form. However, we frequently speak to women who describe conduct of an ex-partner which would appear to constitute stalking offences, and according to the Suzy Lamplugh Trust, in 40-50% of stalking cases there has been an intimate relationship between the victim and the perpetrator, meaning that a high proportion of stalking victims are being stalked by a partner or ex-partner. The creation of SPOs will assist with this, by sending a clear message of intolerance, however work is still required in raising awareness, tackling behavioural and cultural norms and creating positive social change. Law is one tool in this process.

Criminal NHOs can only be granted once a conviction has been secured. This can be a lengthy process and as a result leaves a gap in protection for victim/survivors during the period before a conviction is secured. We acknowledge that there can be significant barriers to reporting in the first place (e.g. fear of not being believed, difficulty gathering evidence due to the nature of the offence, concern for worsening the impact on self and others, a lack of information about the process or not wanting to engage with the criminal justice process). There can be further barriers in securing a criminal conviction in relation to stalking. The introduction of SPOs are a welcome development, as they would enable the police to seek an order where they identify that an individual is at risk but do not yet have sufficient evidence to meet the

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standard required for a criminal prosecution. To seek to improve access to justice for victims/survivors of stalking, the Scottish Women's Rights Centre, a partnership project of Rape Crisis Scotland has created FollowItApp, a mobile app for smartphones that enables service users to record and store information about stalking incidents securely.

Seeking a Non Harassment Order (NHO) through the civil courts requires a victim/survivor to (a) be aware of their right to do this (b) access a solicitor who is able to represent them and (c) be able to fund such an action (and potentially bear the risk of expenses). This can be a costly process and not all victim/survivors will be eligible to claim legal aid or access funded services like the SWRC. There is a lack of specialist solicitors undertaking this type of work. It is also a stressful and intimidating process at a time when the victim/survivor is in a vulnerable situation. They may feel unable to take such an action due to fear of reprisals from their stalker. As such we welcome the introduction of SPOs and the proposed mechanism that these be applied for by the police on behalf of the victim/survivor. We believe that shifting the financial and administrative burden to the state could increase access to protection for victim/survivors.

We would encourage provision being made for the victim/survivor to be represented in the proceedings (should they wish) in relation to a request for an SPO, and for access to non-means tested legal aid to be made available for this (such as the process for complainers to be represented in relation to an application for recovery of sensitive medical records, following the case of *WF v Scottish Ministers* [2016] CSOH 27). At a minimum, the views of the victim/survivors' must be sought and taken into account by the police before making a decision to apply for an SPO. We believe that it would be best practice for the victim/survivors consent to be obtained, and that applications for an SPO without the consent of the victim/survivor should only be pursued in exceptional circumstances. However, care must be taken to ensure that this does not result in pressure being placed on the victim/survivor to retract through fear of retribution, as this would remove a key benefit of these orders being sought by the police.

Guidance can be taken from the framework for Forced Marriage Protection Orders (FMPOs). The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 provides that the views of the protected person must be taken into account, if they are reasonably ascertainable, and as the court considers appropriate on the basis of the person's age and understanding (section 1(3)). It is possible for the protected person to enter proceedings when an FMPO is being sought by a third party on their behalf, however in our experience, there can be a number of barriers that make it difficult for this to happen in practice. The statutory guidance produced by the Scottish Government in respect of Forced Marriage Protection Orders sets out requirements for seeking the views of the protected person which includes access to interpretation services and an independent advocate where needed. We believe that there should be a clear mechanism prescribed for ensuring that the informed views of the victim/survivor are obtained by the police and considered by the Sheriff when applying for SPOs.

The following issues also require consideration:

- There are two elements to the proposed test: that stalking has occurred and that there is a risk to the person. Risk must be appropriately defined, understood and assessed for these orders to be effective, and must include psychological as well as physical risk. Trauma, fear and alarm require to be understood as fundamental measurements of risk, rather than focusing on immediate risks of physical violence.
- Circumstances where both parties are simultaneously recorded as the victim and perpetrator of the same incident (known as dual reporting) require rigorous investigation to identify the primary perpetrator and ensure that victims of stalking are not themselves receiving SPOs when they have been accused by the stalker of the very behaviours which they seek protection from. This may be of further relevance in relation to the notification requirements where it is possible that failure to detect the primary perpetrator could result in the safety of the victim/survivor being further compromised.
- Third parties who are affected by the stalking behaviour should be able to be included in SPO provisions, such as children, other family members and friends.
- Consideration should be given to victims/survivors experiencing cross-border stalking, where the residence of the victim/survivor and the perpetrator become relevant to where and how orders are applied for.
- The investigation of stalking incidents must acknowledge the criminal nature of a course of conduct which causes fear and alarm. While SPOs can introduce an additional tool for victim survivors of stalking, they must not replace the full investigation and prosecution of this crime.

In relation to the proposal that the Bill would contain notification provisions, consideration should be given to any implications on people's rights under Article 8 of the European Convention on Human Rights to ensure that such provisions would be implemented in a proportionate manner and that there are sufficient checks and balances (such as having a specified duration or a mechanism for review). As noted above,

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?

this could potentially place a victim/survivor at greater risk if they were incorrectly identified as a perpetrator of stalking and if an SPO was granted against them, again highlighting the importance of rigorous investigation of stalking allegations and the correct identification of victims/survivors of stalking.

Access to civil protective orders (and access to legal aid to seek them) must not be undermined by the introduction of SPOs. Negative inferences should not be drawn from a victim/survivor declining to report to the police or because the police do not pursue an SPO, due to the barriers noted above.

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?

Partially supportive

Please explain the reasons for your response.

RCS considers that the duration of SPOs should be in line with those of NHOs. That is, the duration should be as the court sees fit. We note that NHOs are often granted for 3 years initially. It is not clear how long the process of applying for an SPO will take or how long it will take to put the order in place. Nevertheless, if the timescale exceeds that of seeking an interim interdict, which we assume it will, then the inclusion of interim orders should be possible for circumstances in which bail conditions are not put in place, to prevent there being a gap in protection. We do not consider that the proposal for SPOs to be up to a maximum of 2 years negates the need for interim orders to be available. Interim orders prove useful where there is an immediate danger to the protected person and because of their interim nature the application process is considerably faster. We would therefore encourage the inclusion of a mechanism for interim SPOs. We welcome the provision for renewal by the court, so long as it is only granted when required and that it is proportionate. We presume this will include the completion of a further risk assessment to identify any additional incidents of stalking and the risk posed by the accused person. We strongly suggest that this assessment should be trauma-informed, robust and effective in identifying the particular risk factors and informing safeguarding measures. Ideally the protected person should be able to be represented at any hearing relating to the extension or recall of the order should they wish.

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 supportive

Please explain the reason for your response.

In order to act as an effective deterrent we believe that a breach of a SPO should be viewed as equivalent to the breach of a NHO and should, therefore, carry the same penalty.

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)?

Partially supportive

Please explain the reasons for this response.

Whilst we have no desire to unnecessarily criminalise the behaviour of young people we are mindful of the increasing number of reported sexual offences perpetrated by young people against other young people, including cyber enabled sexual crime. The majority these are dealt with through the children's hearing system. Young survivors who are accessing support through the National Advocacy Project report that this

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system gives them less protection than they would be afforded through the adult court process. Bail conditions which stipulate a lack of further contact for example are not in place and can leave survivors feeling exposed and vulnerable. Even once the process has concluded young survivors or their supporters are given very limited information about the outcome. For example they might be told that the perpetrator has been given a supervision order but know none of the conditions. This means a lack of clarity or safeguarding for the victim. Young survivors experience their needs and experiences as secondary to those of the perpetrator, and that often it feels like their experiences are not taken seriously. Enabling the Police to apply for Stalking Protection Orders would enable some additional protection for young survivors where their perpetrator was another young person. We would add that many of the comments apply to our previous answers in that: - Young survivors views should be considered and any decision should be done in consultation with the young person, being mindful of the rights of the child victim/survivor - That care should be taken where dual reporting is being used by the perpetrator to silence and intimidate the victim/survivor, to ensure that this is not used inappropriately -That universal prevention and enabling young people to be better able to form healthy, respectful, consensual sexual relationships including a focus on online interactions and the law is vital. As with adults very few young people identify stalking in their own experiences especially where the individual acts are not in themselves criminal - That where young perpetrators are identified as part of the hearing system that therapeutic and future preventative interventions are considered alongside safeguarding and deterrent actions As noted earlier we would consider that further training for the Police, and possibly the Children's Hearing System around stalking and the course of conduct crimes as this relates to young people would be vital in ensuring a considered, trauma informed and effective response. We have noted partially supportive in our answer above as we believe further research into the current data on young people, both as victims and as perpetrators of stalking would be important to identify what current responses currently are to identify what steps should be taken in enabling effective safeguarding for young survivors.

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.

We welcome the potential removal of financial barriers to accessing safety and justice for those experiencing stalking.

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?

Slightly positive

Please explain the reasons for your response.

Stalking is disproportionately committed by men against women and, consequently, the introduction of SPOs could have a positive impact on women's safety, including for those with protected characteristics who may already experience specific barriers to access justice after experiencing abuse.

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

No Response

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?

No Response