

SERIOUS ORGANISED CRIME AND POLICE ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 4: Public order and conduct in public places etc.

Section 125: Harassment intended to deter lawful activities

302. A number of companies have been granted injunctions under section 3 of the Protection from Harassment Act 1997 (“the 1997 Act”) to protect their employees from harassment by animal rights protestors. Despite this, it is not clear how far the 1997 Act can be used to protect employees of a company or a company itself.
303. Under section 1 of the 1997 Act the term “harassment” applies to a course of conduct which harasses or alarms another or which causes that person distress. The conduct has to take place on at least two occasions. Section 2 of the 1997 Act makes it a criminal offence for a person to pursue a course of conduct which amounts to harassment of another and which that person knows amounts to harassment of the other. Section 3 provides a civil remedy which enables a victim to seek an injunction against a person who is harassing them or may be likely to do so. To secure a conviction under section 2 it needs to be proven that there is a course of conduct in which one person harassed another on at least two occasions. The courts have applied a strict interpretation of the word “another” which has confined the application of this provision to harassment of individuals and thus it is unclear how far employees of a company can benefit from this provision when they have not previously themselves been harassed even though a fellow employee has been.
304. **Section 125** seeks to address this. *Subsection (2)* amends section 1 of the 1997 Act by inserting a new subsection (1A) which makes it an offence for a person to pursue a course of conduct involving the harassment of two or more persons on separate occasions which he knows or ought to know involves harassment and the purpose of which is to persuade any person (not necessarily one of the persons being harassed) not to do something he is entitled to do or to do something he is not under any obligation to do. It is not intended to catch lawful lobbying or peaceful protesting. A person distributing leaflets outside a shop about which they are protesting, for example, would not be caught unless they were to actually threaten or intimidate the person to whom they were handing out the leaflet and that person felt harassed, alarmed or distressed. There would also have to be at least two separate incidents amounting to a course of conduct. The sort of behaviour which will engage the new offence is activity involving threats and intimidation which forces an individual or individuals to stop doing lawful business with another company or with another individual.
305. *Subsection (5)* inserts a new section 3A in the 1997 Act. This new section allows for an injunction to be sought where there is an actual or apprehended breach of new

section 1(1A). New section 3A(2) defines who can apply to the High Court or county court for an injunction, namely the person who is the victim of the course of conduct or any person at whom the persuasion is aimed. In other words, where people who work for a particular company are being harassed in order to persuade them not to work for that company, or in order to persuade the company not to supply another company, either the employees themselves or the company in question could apply for an injunction.

306. *Subsection (7)* amends the definition of course of conduct in section 7(3) of the 1997 Act to clarify that, in the case of conduct in relation to two or more persons, course of conduct means conduct on at least one occasion in relation to each person.

Section 126: Harassment etc of a person in his home

307. *Subsection (1)* inserts a new section 42A in the Criminal Justice and Police Act 2001 to create a new offence of harassment etc of a person in his home.
308. Currently, section 42 of the Criminal Justice and Police Act 2001 gives the police the power to issue a direction to any person who is outside or in the vicinity of a person's home and who they reasonably believe is there to represent to the resident, or persuade the resident, that he should not do something that he is entitled to do (or should do something that he is not obliged to do) and his presence amounts to or is likely to cause the resident harassment, alarm or distress.
309. The new offence criminalises behaviour of broadly the same kind as that which currently enables the police to issue a direction under section 42 of the Criminal Justice and Police Act 2001.
310. New section 42A(1) (a) to (d) sets out the four ingredients of the new offence which need to be proved. A person will commit an offence if (i) he is present outside or in the vicinity of any premises that are used as a dwelling; (ii) he is there to represent to the resident or another individual, or persuade the resident or another individual, that he should not do something he is entitled to do or should do something he is not obliged to do; (iii) the person intends his presence to amount to harassment, alarm or distress to the resident or knows or ought to know that his presence is likely to do so; and (iv) his presence amounts to or is likely to result in harassment of the resident or another individual.
311. New section 42A(2) defines the individuals who can be subjected to harassment by a person under subsection (1) - namely, the resident, someone in the resident's dwelling or a person in a nearby dwelling, for example a neighbour.
312. New section 42A(3) clarifies that a person's presence in subsections (1)(c) and (d) can be a person's presence on his own or with other people.
313. New section 42A(5) sets out the penalty for the offence under subsection (1).
314. New section 42A(7) clarifies that "dwelling" in section 42A has the same meaning as in Part 1 of the Public Order Act 1986, namely "any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied...".
315. *Subsection (2)* provides a constable in uniform with a power to arrest anyone who he reasonably suspects is committing or has committed an offence under new section 42A. By virtue of *subsection (3)* this arrest power will cease to have effect on the commencement of section 110 of this Act which provides a new arrest regime for offences.

Section 127: Harassment etc: police direction to stay away from person's home

316. **Section 127** amends section 42 of the Criminal Justice and Police Act 2001 (the "2001 Act") to make it an offence for a person, where he is subject to a direction to leave the

vicinity, to return within a period of up to 3 months (the precise length of time to be specified by a constable) for the purposes of representing to or persuading a person not to do something he is entitled to do, or to do something he is not obliged to do.

317. It is doubtful whether a direction issued by a police officer under section 42 could lawfully direct a person to stay away from the premises for anything other than a relatively short period of time. Section 127 addresses this point.
318. *Subsection (2)* substitutes a new section 42(4) of the 2001 Act, which sets out the requirements that may be imposed by a direction. This gives a police constable the discretion to require someone either just to leave the vicinity of the premises in question, or to leave the vicinity and not to return to it within a specified period of up to 3 months.
319. The effect of *subsections (3) and (4)* of section 127 is to create different offences and penalties for non-compliance with a direction, depending on the requirements imposed by the direction.
320. *Subsection (3)* amends subsection 42(7), which is the current offence and penalty for knowingly contravening a direction given by a constable, to make it clear that the offence in 42(7) does not apply to situations where a requirement to leave the vicinity and not to return within a specified period has not been complied with.
321. *Subsection (4)* inserts new subsections (7A) to (7C) in section 42 of the 2001 Act. New subsection (7A) creates a new offence of failure to comply with a direction to leave the vicinity and not to return within a specified period for the purposes of representing to or persuading the resident that he should do something or not to do something. New subsection (7B) sets out the penalty for an offence committed under subsection (7A).
322. New subsection (7C) is a transitional provision which takes into account the alteration of penalties for summary offences in the Criminal Justice Act 2003. Until section 281(5) of the Criminal Justice Act 2003 comes into force, the maximum custodial penalty for the new offence will be 6 months.

Section 128: Offence of trespassing on designated site

323. This section creates a criminal offence in England, Wales and Northern Ireland, of trespassing on sites designated by order by the Secretary of State. *Subsection (3) (a) to (c)* specify the circumstances in which the Secretary of State may designate a site. The Secretary of State may designate a site if (a) it is Crown land (defined in *subsections (8) and (9)*), (b) it is privately owned by either the Monarch or the immediate heir to the Throne, or (c) it appears to the Secretary of State that it is appropriate to do so in the interests of national security.
324. *Subsection (4)* provides a defence to a person charged with an offence under this section whilst *subsection (6)* states proceedings may not be brought against a person for this offence without the consent of the relevant Attorney General.

Section 129: Corresponding Scottish offence

325. This section provides a corresponding offence of entering, or being on, a designated site in Scotland without lawful authority. However, the Secretary of State may only designate sites in Scotland in the interests of national security (*subsection (3)*). *Subsection (4)* provides a defence to a person charged with an offence under this section.

Section 130: Designated sites: powers of arrest

326. This section gives a constable in England and Wales a power to arrest without warrant an individual who he reasonably suspects is committing or has committed an offence under section 128. Once section 110 is in force, this will not apply. A similar power in respect of Northern Ireland is achieved by *subsection (2)* which states that an offence under section 128 is an arrestable offence under the Police and Criminal Evidence

(Northern Ireland) Order 1989. *Subsection (3)* gives a constable in Scotland a power to arrest without warrant an individual who he reasonably suspects is committing or has committed an offence under section 129.

Section 131: Designated sites: access

327. This section has the result that various public access rights in England, Wales, Scotland and Northern Ireland will not be exercisable in relation to land which is the subject of a designation order made under section 128(2) or 129(2) as appropriate. *Subsection (1)* lists the public access legislation, namely section 2(1) of the Countryside and Rights of Way Act 2000, Part III of the Countryside (Northern Ireland) Order 1983 and section 1 of the [Land Reform \(Scotland\) Act 2003 \(asp2\)](#). *Subsection (2)* permits the Secretary of State to take any necessary steps to inform members of the public of the effect of the designation order, including in particular displaying notices on or near the relevant site. *Subsections (3)* and *(4)* set out the circumstances in which the Secretary of State may take such steps.

Section 132: Demonstrating without authorisation in designated area

328. *Subsection (1)* creates the offence of organising or taking part in a demonstration, or carrying out a demonstration alone, without an authorisation in the designated area, which is defined in section 138. *Subsections (3)*, *(4)* and *(5)* provide exemptions for lawful industrial disputes and public processions.

Section 133: Notice of demonstrations in designated area

329. *Subsection (1)* requires that a person seeking authorisation for a demonstration gives written notice to the Commissioner of Police of the Metropolis. *Subsection (2)* provides that if it is reasonably practicable, notice is to be given not less than 6 clear days before the demonstration is to start. If not reasonably practicable, notice is to be given as soon as it is. In all cases at least 24 hours' notice must be given.

330. *Subsection (3)* requires that the notice is given by the organiser and *subsection (4)* sets out what the notice must include. *Subsections (5)* and *(6)* set out how the notice can be delivered to the Metropolitan Police.

Section 134: Authorisation of demonstrations in designated area

331. *Subsections (1)* and *(2)* set out that if a written notice complying with section 133 is received the Commissioner must give authorisation for the demonstration.

332. *Subsection (3)* allows the Commissioner to impose conditions on those taking part in or organising a demonstration, if, in his reasonable opinion they are necessary for the purpose of preventing any of the following:

- (a) hindrance to any person wishing to enter or leave the Palace of Westminster,
- (b) hindrance to the proper operation of Parliament,
- (c) serious public disorder,
- (d) serious damage to property,
- (e) disruption to the life of the community,
- (f) a security risk in any part of the designated area,
- (g) risk to the safety of members of the public (including any taking part in the demonstration).

333. *Subsection (4)* sets out details of the conditions the Commissioner may impose. *Subsection (5)* set out what the authorisation must specify. *Subsection (6)* requires

the Commissioner to give notice in writing of the authorisation and of certain other specified matters.

334. *Subsection (7)* makes it an offence not to comply with a condition or to diverge from the particulars specified in the authorisation. *Subsection (8)* creates a defence if a person can prove that failure arose from causes beyond his control or from something done with the agreement or by the direction of a police officer.

Section 135: Supplementary directions

335. This section allows the senior officer at the scene to impose additional conditions or to vary conditions imposed by the Commissioner or later by a police officer if the senior officer reasonably believes that they are necessary for preventing the results set out in section 134(3).

336. *Subsection (5)* defines "senior police officer" as the most senior in rank at the scene.

Section 136: Offences under sections 132 to 135: penalties

337. *Subsections (1) to (4)* set out the penalties for the offences under sections 132 to 135. *Subsection (5)* provides a constable in uniform with a power to arrest anyone whom he reasonably suspects is committing an offence under these sections. This arrest power will cease to have effect on the commencement of section 110 of this Act which provides a new arrest regime for offences.

Section 137: Loudspeakers in designated area

338. *Subsection (1)* states that a loudspeaker shall not be operated, at any time for any purpose in a street within the designated area. *Subsections (2) and (3)* set out the exceptions. *Subsection (4)* sets out the penalties for operating a loudspeaker in contravention of the prohibition.

Section 138: The designated area

339. *Subsection (1)* provides for "the designated area" to be defined in an order (subject to the negative resolution procedure) made by the Secretary of State. *Subsection (3)* states that no point in the designated area may be more than one kilometre from Parliament Square.

Section 139: Orders about anti-social behaviour etc

340. This section amends the Crime and Disorder Act 1998 ("the 1998 Act"). *Subsection (2)* provides that in proceedings for breach of an anti-social behaviour order pursuant to section 1(10) of the 1998 Act, a copy of the court order as granted (including any maps and details of any prohibitions) can be put before the court as evidence that an order has been made, without the need for a statement formally proving the making of the original order.

341. *Subsection (3)* amends section 1A of the 1998 Act to provide an order making power enabling the Secretary of State to add to the list of "relevant authorities" that may apply for anti-social behaviour orders. *Subsection (4)* provides that the court can adjourn the proceedings for consideration of a section 1C order (anti-social behaviour orders on conviction). This adjournment can take place after sentence has been passed.

342. *Subsections (6) to (9)* give the court the power to grant an interim order in relation to an application for an order under section 1 or 1B or a request under section 1C of the 1998 Act pending a full hearing.

343. *Subsection (10)* provides that the court can adjourn the proceedings for consideration of a Football Banning Order as set out in section 14A of the Football Spectators Act 1989. This adjournment can take place after sentence has been passed.

Section 140: Variation and discharge of anti-social behaviour orders made on conviction

344. This section also amends the Crime and Disorder Act 1998. *Subsection (4)* inserts new section 1CA which allows a “relevant authority” as set out in section 1(1A) or the Crown Prosecution Service (CPS) to apply to vary or discharge an anti-social behaviour order made on conviction (that is, a section 1C order). At present only the subject of a section 1C order may make such an application.
345. New subsection 1CA (7) provides that no section 1C order shall be discharged before two years have passed since the date of the order without the consent of the defendant and the DPP. This is replicating the same principle that exists for section 1 and 1B orders, where the two parties to the application have to consent (section 1(9)).

Section 141: Anti-social behaviour orders etc.: reporting restrictions

346. This section disapplies automatic reporting restrictions for breaches, committed by children and young persons, of anti-social behaviour orders and orders made under sections 1B and 1C of the Crime and Disorder Act 1998. *Subsection (2)* provides that in proceedings brought against a child or young person for breach of such an order, a court will not be bound by automatic reporting restrictions in section 49 of the Children and Young Persons Act 1933. However, the court will retain discretion to apply reporting restrictions. *Subsection (3)* provides that breaches of anti-social behaviour orders made on conviction will also be covered by this amendment.

Section 142: Contracting out of local authority functions relating to anti-social behaviour orders

347. This section amends Part 1 of the Crime and Disorder Act 1998 (“the 1998 Act”), by inserting a new section 1F – Contracting out of local authority functions. Section 1 of the 1998 Act provides power for a ‘relevant authority’ to apply for an Anti-social Behaviour Order (ASBO) in respect of any person aged over 10.
348. Subsection (1) of new section 1F of the 1998 Act enables the Secretary of State to make an order which may specify a person to whom local authorities may contract out their ASBO functions, which may be exercised by that person or employees of his.
349. Subsection (2)(a) and (b) of new section 1F provides that the order may specify conditions on how the local authority must make arrangements for contracting out its ASBO functions. Subsection (2)(c) also enables the local authority to make its own conditions when contracting out its ASBO functions.
350. Subsection (3)(a) of new section 1F provides that the order may specify whether the local authority may contract out all or some of its ASBO functions (under section 1 of the 1998 Act). Subsection (3) also provides that the order may specify whether the local authority can make arrangements enabling a person specified in the order to exercise its ASBO functions generally, or only in specific cases or areas.
351. Subsection (4) of new section 1F provides that the order may specify that the person to whom the local authority may contract out its ASBO functions, may be treated as if he were a public body for the purposes of section 1 of the Local Authorities (Goods and Services) Act 1970. This may be necessary to enable the local authority to provide to the specified person any goods or services to facilitate the exercise of the contracted out ASBO function.
352. Prior to the making of an order, subsection (5) of new section 1F requires the Secretary of State to consult the National Assembly for Wales where the order specifies relevant authorities in Wales, such representatives of local government and any other persons as he thinks appropriate.

*These notes refer to the Serious Organised Crime and Police
Act 2005 (c.15) which received Royal Assent on 7th April 2005*

353. Subsection (6) of new section 1F provides that, notwithstanding any contracting out arrangements the local authority may wish to make, the local authority still retains the power to discharge its ASBO functions (under Section 1 of the 1998 Act).
354. Subsection (7) of new section 1F provides that the following provisions of the Deregulation and Contracting Out Act 1994 apply to the contracting out of ASBO functions:
- section 72 (effect of contracting out);
 - section 73 (termination of contracting);
 - section 75 and Schedule 15 (provision relating to disclosure of information);
 - paragraph 3 of Schedule 16 (authorised persons to be treated as officers of local authority).
355. Subsection (8) of new section 1F ensures that the application of the provision mentioned in subsection (7) operates in relation to a person specified by an order under this section to whom a local authority has contracted out its functions.
356. Subsection (9) of new section 1F provides that local authorities and the persons to whom they may contract out their ASBO functions, must have regard to any guidance issued by the Secretary of State for the purposes of section 1F. Subsection (10) enables an order to make different provision for different purposes. Subsection (11) of new section 1F enables an order to include consequential, supplemental, incidental, transitional or savings provisions. Subsection (12) of new section 1F defines local authorities for the purposes of this section.
357. *Subsections (2) and (3)* of section 142 makes minor consequential amendments to the 1998 Act.

Section 143: Special measures for witnesses in proceedings for anti-social behaviour orders etc.

358. This section amends the Crime and Disorder Act 1998 by inserting a new section 11. *Subsection (2)* of new section 11 makes provision for special measures directions, as set out in Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999, to be made in proceedings relating to anti-social behaviour orders. These proceedings are listed in *subsection (1)*. They are proceedings in a magistrates' court on application for an anti-social behaviour order, proceedings in a magistrates' court or Crown Court on application for an anti-social behaviour order following conviction, and proceedings in a magistrates' court on application for an interim anti-social behaviour order. At present special measures directions under the Youth Justice and Criminal Evidence Act apply to vulnerable and intimidated witnesses in the context of criminal proceedings only.
359. *Subsection (4)* of new section 11 provides for the appropriate rules of court to apply, subject to any modification provided for by the rules.
360. *Subsection (5)* of new section 11 applies sections 47, 49 and 51 of the Youth Justice and Criminal Evidence Act 1999. These sections relate to restrictions on reporting special measures directions and associated offences.

Section 144: Parental compensation orders

361. This section gives effect to schedule 10.