

# The Scottish Parliament

The Information Centre

Research Note

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## STALKING AND HARASSMENT

**In recent years high profile cases in the UK and the US involving the 'stalking' of both celebrities and ordinary people have attracted considerable media attention fuelling demands for the law in this area to be strengthened. This research note looks at the nature and extent of stalking and at current policy initiatives by the UK Government and the Scottish Executive in the areas of stalking and harassment.**

### ***WHAT IS STALKING?***

There is no legal definition of stalking in the UK, however, the term 'stalking' is generally used to describe a form of behaviour which involves the unwelcome and repeated following of or communicating with another person in a manner which that person finds distressing or threatening. In most such cases the victim is a person with whom the perpetrator has had or would like to have an intimate or personal relationship. 'Stalking' is often used interchangeably or in conjunction with 'harassment' to describe the same or similar types of behaviour.

The frequent conflation of the terms 'stalking' and 'harassment' is understandable as stalking can be regarded as a serious form of harassment and there is no clear division between the two forms of behaviour. However, a distinction is usually drawn between behaviour which, while possibly recurrent and annoying, such as neighbour nuisance, poses little real threat to the victim, and more serious personal harassment in which individuals are repeated targets of one or more

perpetrators. Similarly, harassment targeted on specific groups because of racial or religious affiliation is not usually regarded as stalking even though the effect on the victim might be similar. In general, then, harassment is not regarded as stalking where the harassment is minor or random, where it does not present what is often termed a 'credible threat' to the victim or where there is no real or perceived personal relationship between the perpetrator and victim.

### **CURRENT LAW ON HARASSMENT IN THE UK**

The UK Government's principal legislative response to the issue of stalking and harassment to date has been the [Protection from Harassment Act 1997](#). While this Act does not mention stalking *per se*, it adopts a definition of harassment that includes behaviour which could be construed as stalking.

The Act created, for England and Wales, a new offence of harassment together with civil remedies and restraining orders. The maximum penalty under section 2 of the 1997 Act (where there is no fear of violence) is a Level 5 fine (£5,000) and/or a term of imprisonment not exceeding six months. Where people are put in fear of violence (section 4 of the Act) the maximum sentence on indictment is a term of imprisonment not exceeding 5 years and/or an unlimited fine.

Injunctions can also be granted under English common law on the basis of principles set out in the case of *Burris v Azadani*.<sup>1</sup> In addition the Court of Appeal and House of Lords have held that stalkers who cause psychological injury to their victims can be prosecuted for the criminal offences of causing actual bodily harm or grievous bodily harm even in cases where they have not physically attacked their victim.<sup>2</sup>

Under the 1997 Act, 'harassment' involves a course of conduct involving at least two occasions when the perpetrator intentionally causes 'alarm or distress' to the victim by their actions or speech. It is, however, a defence against an action of harassment to show that the course of conduct was legally authorised, was for the purposes of preventing or detecting crime, or was 'reasonable' in the circumstances.<sup>3</sup>

Stalkers may be prosecuted under several other UK statutes for activities which relate to stalking. Under the *Telecommunications Act 1984*, for example, it is an offence to send by a public telecommunications system a message or other matter which is grossly offensive or of an obscene or menacing character.<sup>4</sup>

It is also an offence in England & Wales under section 1 of the *Malicious Communications Act 1988* to send letters which convey a message which is

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<sup>1</sup> [1995] 1 WLR 1372.

<sup>2</sup> See, for example, [R v Burstow & R v Ireland](#)

<sup>3</sup> *Protection from Harassment Act 1997*, Section 8.

<sup>4</sup> See S. 43 of the *Telecommunications Act 1984* which extends to Scotland.

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indecent or grossly offensive or contains threats the purpose of which is to cause distress or anxiety.

In addition, there are several offences under the *Public Order Act 1986* which can be applied to incidents of stalking in England & Wales.

## **SCOTLAND**

The Scottish criminal law has long provided the common law offence of 'breach of the peace' for behaviour which could be construed as stalking or harassment and the majority of such cases are prosecuted under this head or, less frequently, under the common law crime of threats.

Breach of the peace has been variously defined in Scots law to cover forms of conduct which cause or are likely to cause a person to be alarmed, upset or annoyed or to provoke a disturbance of the peace.<sup>5</sup> While breach of the peace may be criticised for its lack of precision in relation to stalking and harassment, there are advantages in using such a widely defined public-order offence to prosecute this type of behaviour. First, a police officer needs only reasonable cause to believe that a person has committed a breach of the peace to justify arrest. In cases prosecuted under the 1997 Act a 'course of conduct' by the perpetrator must be shown to have taken place in relation to the victim. Secondly, as a common law offence, severity of sentencing for breach of the peace is limited only by the court in which the case is heard. In theory, the High Court of Justiciary could impose a life sentence for this offence.

On the other hand critics say that breach of the peace is too blunt an instrument for the prosecution of stalkers as the offence potentially encompasses a large part of the criminal law in that almost any conduct can be liable as a breach of the peace<sup>6</sup>. Indeed, the very breadth of this crime and the potential for imprecision in framing charges has already resulted in a challenge under the European Convention on Human Rights<sup>7</sup>. Use of such a widely construed charge suggests to some that the seriousness of stalking is not being sufficiently recognised. An additional problem is that judges are not able to tell from previous convictions for breach of the peace whether a prior offence related to stalking or harassment. This latter point has been addressed to some extent in that, since 1998, the police have explicitly recorded incidents of breach of the peace involving harassment.<sup>8</sup>

The [Protection from Harassment Act 1997](#), as it applies to Scotland, contains civil remedies with regard to protection from harassment and similar conduct.<sup>9</sup> In a

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<sup>5</sup> The Laws of Scotland. Stair Memorial Encyclopaedia, Vol 7 para 444.

<sup>6</sup> In *Montgomery v McLeod* 1977 SCCR Supp 164 at 165 it was stated that there is no limit to the kind of conduct that will lead to a charge of breach of the peace.

<sup>7</sup> Three [ECHR](#) articles relate to this issue, the most obvious of which is article 6(3)(a) which requires a person charged with a criminal offence: "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him". See also Article 8 (right to respect for private and family life) and article 10 (freedom of expression).

<sup>8</sup> ['Stalking and Harassment'](#): A Consultation Document, Scottish Executive Justice Department, para 10.

<sup>9</sup> *Protection from Harassment Act 1997* Sections 8 to 11.

civil action of harassment a court in Scotland may award damages, grant interdict or interim interdict. If the court thinks it appropriate in the circumstances of the case, and where it is satisfied that a course of conduct exists - that is if it occurs on two or more occasions, it may grant a 'non-harassment order' requiring the defender to refrain from the conduct complained of for a specified period. This period can be indeterminate. Any person who breaches a non-harassment order is guilty of an offence and is liable, on summary conviction, to imprisonment for a period not exceeding 6 months or a fine not exceeding the statutory maximum or both. On indictment, a convicted person is liable to imprisonment for a period not exceeding 5 years or to a fine or both.

Partial protection from stalking by former intimate partners is provided in Scotland through the availability of exclusion orders and matrimonial interdicts, the latter of which may have the power of arrest attached for breach of interdict, under the *Matrimonial Homes (Family Protection) (Scotland) Act 1981*. The protection offered is partial because it does not extend to relationships other than marriage and such protection ceases to have effect on the termination of the marriage. It is the Executive's intention, however, that the scope of the 1981 Act should be extended to include former spouses and cohabitants. In a statement to the Scottish Parliament in January this year the Minister for Justice said<sup>10</sup>:

*"We will ... introduce new measures to strengthen the legal protection available to victims of domestic abuse. Matrimonial interdicts will be extended to former spouses and cohabitants, and we propose that they be renamed "domestic interdicts". They will be extended to last for up to 3 years and will not fall when a divorce is granted. Also, they will be able to cover more than just the immediate home, so that vulnerable people are protected at their work or at their children's schools.*

*Members have, rightly, been very concerned that people who have been threatened by, or consider themselves under threat from, their spouse or cohabitee should get the protection they need and deserve. Our proposals will improve protection to members of families disrupted by abuse".*

## **STALKING LEGISLATION IN OTHER JURISDICTIONS**

Many jurisdictions outwith the UK have passed anti-stalking laws and these provide a variety of definitions of the offence. Stalking is a specific crime in all 50 US States where it is classified as either a felony (serious crime) or misdemeanour, and in most parts of Australia. Invariably stalking is defined in legislation in relation to a list of prohibited activities and there is usually a requirement that the Stalker's activities should present a 'real and credible threat' of violence and not merely be harassing. Typical examples of anti-stalking legislation in the US and Australia are given below.

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<sup>10</sup> <http://www.scotland.gov.uk/news/2000/01/se0100.asp>

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**California Penal Code section 646.9. Stalking. 1998.**

(a) Any person who wilfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

**Victoria Crimes Act 1958 S21a**

(1) A person must not stalk another person.

Penalty: Level 5 imprisonment (10 years maximum).

(2) A person (the offender) stalks another person (the victim) if the offender engages in a course of conduct which includes any of the following-

(a) following the victim or any other person;

(b) telephoning, sending electronic messages to, or otherwise contacting, the victim or any other person;

(c) entering or loitering outside or near the victim's or any other person's place of residence or of business or any other place frequented by the victim or the other person;

(d) interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property);

(e) giving offensive material to the victim or any other person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person;

(f) keeping the victim or any other person under surveillance;

(g) acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for his or her own safety or that of any other person with the intention of causing physical or mental harm to the victim or of arousing apprehension or fear in the victim for his or her own safety or that of any other person and the course of conduct engaged in actually did have that result.

A number of factors are common to most legal definitions of stalking. These are that stalking involves conduct which is intentional, repeated, non-reciprocated, perceived as threatening and which has the effect of causing fear or alarm in the person being stalked.

Such conduct includes: following the other person; sending messages, including electronic messages; telephoning; entering or loitering outside or near the victim's residence or place of business; interfering with the victim's property and, in extreme cases, actual physical assault.

One commentator has succinctly described stalking as:

*"...a course of conduct which harasses, threatens, intimidates, molests, alarms or causes distress to an individual and which is carried out either for that purpose or for the purpose of compelling that person to do or refrain from doing anything which that person has a right to refrain from doing or to do".<sup>11</sup>*

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<sup>11</sup> Allen, Michael J 'Look Who's stalking: Seeking a Solution to the Problem of Stalking, Web Journal of Current legal Issues, 1996.

## **CYBERSTALKING**

In recent years there has been an increasing number of reported cases involving electronic stalking through the use of e-mail, the internet and other forms of electronic communication. This type of harassment has also become known as 'cyberspace stalking' or 'cyberstalking'. It is now common for anti-stalking legislation to include specific reference to cyberstalking. The US Government, for example, has amended federal law prohibiting telephone harassment to include harassment through the use of 'telecommunications devices' and 'communications' (US Telecommunications Act 1996).

## **EXTENT OF STALKING**

There has been little research conducted or published to-date on the issue of stalking in the United Kingdom and probably none at all in Scotland. The extent of stalking in this country is therefore unknown. A small-scale study involving 100 women in Leicester and Liverpool carried out recently by Leicester University gives the first indication that the phenomenon may be more prevalent than commonly believed. This study found that one in five women had been the victim of a stalker and that 14 per cent of the victims had suffered severe and sustained intimidation<sup>12</sup>.

There have, however, been a number of US studies that have attempted to measure the extent of stalking in America. A recent US Department of Justice report, which includes findings from the first US national survey on stalking<sup>13</sup>, found that over a million American women are stalked each year and that one in 12 women (8%) and one in 45 men (2%) are stalked at some point in their lives. The survey found that 74% of stalking victims were between 18 and 39 years old, that 78% of victims were women, that half of those victims were stalked by a former intimate partner and that over three quarters (80%) of these women had been physically assaulted by that partner.

In relation to the perpetrator, the survey found that 94% of stalkers were identified by female victims as male as were 60% of stalkers identified by male victims. In total 87% of all stalkers were identified as male.

The survey also confirmed previous reports that people are most often stalked by someone they know rather than strangers. Less than a quarter (23%) of female victims and just over a third (36%) of male victims reported that their stalkers were unknown to them.

The demographic profile of the 'typical' stalking victim which emerges from this research, therefore, is of a female between the ages of 18 and 39 and of the 'typical' stalker as a male of about the same age with some form of prior relationship to his victim.

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<sup>12</sup> See <http://www.intel-sec.demon.co.uk/stalking/reports/190798.htm>

<sup>13</sup> Stalking and Domestic Violence', the Third Annual Report to Congress under the Violence Against Women Act, 1998.

This research also highlights an inherent weakness in most current US legislation on stalking. The requirement for a stalker to pose a 'credible threat' to the victim effectively excludes incidents in which no overt threats are made but where the repeated behaviour of the stalker nevertheless causes the victim fear or alarm.

A recent [report on cyberstalking](#) by the US Attorney General suggests that cyberstalkers share similar motivations to 'offline' stalkers and, like the latter, are predominately, though not exclusively male, with the majority of their victims being female and former intimates.<sup>14</sup> The report also suggests that while cyberstalking may appear to be less threatening, and therefore less serious than physical stalking, victims may experience similar levels of fear and anxiety. Such fears may be compounded by the fact that the cyberstalker may live or work in close proximity to their victim. Alternatively, the internet enables 'distance stalking' where the perpetrator may live in another state or even abroad<sup>15</sup>. A further concern is that the very anonymity and remoteness of the internet may encourage stalkers who would shrink from more personal forms of contact.

The report concludes that while there has been no large scale study on the extent of cyberstalking there is an emerging body of evidence, albeit largely anecdotal, that this is a growing but relatively under recognised and under reported problem. The principal issues which need to be addressed are a lack of awareness of cyberstalking and its potential effect on victims by criminal justice agencies, the fact that cyberstalking often crosses jurisdictions and a lack of appropriate laws to aid and encourage investigation and prosecution.

In summary, the main findings to emerge from the US on stalking include<sup>16</sup>:

- Stalking, including cyberstalking, is a much bigger problem in the US than previously assumed and should be treated as a major criminal justice problem and public health concern.
- Stalkers often do not threaten their victims verbally or in writing; therefore, 'credible threat' requirements should be eliminated from anti-stalking statutes to make it easier to prosecute such cases.
- In the vast majority of stalking cases, the victim and perpetrator know each other and are usually current or former intimates; the strong link drawn between stalking and domestic violence is, therefore, an important finding of this and similar research and suggests that future research should focus on stalking between intimates and acquaintances rather than stalking of celebrities or politicians.
- In cases involving intimates, the link between stalking and other forms of violence between the victim and stalker suggests the need for comprehensive training of police officers, prosecutors, judges, parole and probation officers,

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<sup>14</sup> 'Cyberstalking: A New Challenge for Law Enforcement and Industry', Report from the Attorney General to the Vice President, August 1999.

<sup>15</sup> See, for example, the case of Angela Westwater who was 'cyberstalked' by someone 5,000 miles away in the US. [http://news6.thdo.bbc.co.uk/hi/english/uk/newsid\\_378000/378373.stm](http://news6.thdo.bbc.co.uk/hi/english/uk/newsid_378000/378373.stm)

<sup>16</sup> Ibid, Chapter 5

and other criminal justice personnel on the specific safety needs of stalking victims.

- Awareness raising among criminal justice agencies is also necessary in relation to cyberstalking to highlight the extent and seriousness of the offence and to emphasise its cross-jurisdiction potential.
- Stalking victims attributed the termination of stalking to informal police interventions such as police warnings, rather than to formal interventions, such as arrests, indicating the need for more research on the effectiveness of various legal interventions in different situations.
- There is some evidence that anti-stalking laws have increased the number of such crimes reported to authorities, but more research is needed to determine the full extent of the impact of these laws on reporting.
- The mental health community must receive comprehensive training on appropriate treatment for victims of stalking.

### **WHY DO PEOPLE 'STALK'?**

Stalking can be examined from several different perspectives including:

- the conduct of the perpetrator
- the impact it has on the victim
- the motives that drive the stalker's behaviour

While the law is primarily concerned with conduct and behaviour, it is important also that legislative provision fully reflects the seriousness of stalking in terms of the impact it has on victims by providing judges with adequate sentencing powers. An understanding of the various motivations of stalkers is also vital in deciding the best way of tackling the problem whether this is through new legislation or more effective use of existing statutory or common law powers. An appreciation of motivation also makes possible the development of effective risk assessment techniques and treatment regimes.

Classification systems or 'typologies' of stalkers usually attempt to classify stalkers on the basis of the motives which underlie their behaviour. There is, however, no universally agreed typology. Rather several more or less overlapping typologies are in current use. The US-based [Anti-stalking Web Site](http://www.antistalking.com/)<sup>17</sup>, proposes a simple three-classification typology:

- Former intimate partner stalkers
- Delusional stalkers
- Vengeful stalkers

**Former intimate partner stalkers** are people, most often men, who refuse to believe that a relationship has ended. The vast majority of such stalkers would have been emotionally abusive and controlling during the relationship and are likely to have had a prior history of abusive relationships. Many will have criminal

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<sup>17</sup> <http://www.antistalking.com/>

histories unrelated to stalking. The sense of self-worth of the former intimate partner stalker is closely related to their relationship with the victim and rejection is experienced as abandonment and betrayal. Well over half of stalkers are thought to fall into the "former intimate partner" category.

**Delusional stalkers** tend to be unmarried and socially immature loners who are unable to establish or sustain close relationships with others. They frequently come from a background that was either emotionally barren or severely abusive. They rarely date and have had few, if any, sexual relationships. Many will have had little or no contact with their victims who typically will be of higher social status than themselves. The delusional stalker may suffer from mental illnesses such as schizophrenia, manic-depression or 'erotomania' but they have in common a false belief that keeps them tied to their victims.

'So-called 'erotomaniac' stalkers are a category of delusional stalker who believe that the object of their stalking behaviour loves him or her and that they are having a relationship even though they might never have met. Public figures or 'celebrities' are often the targets of erotomaniac stalkers. Both males and females are affected by this form of behaviour though it was once believed that women were more affected than men. This type of stalker has the potential for violence when their "love" is persistently unrequited by the victim and some studies show that delusional stalkers are the most tenacious of all with erotomaniac delusions lasting an average of ten years.

Another type of delusional stalker is the 'borderline erotomaniac'. These stalkers experience intense emotional feelings for someone whom they know they are not having a relationship with and who does not reciprocate these feelings. However, they believe themselves to be destined to be with that person and that the person, in time, will come to love them.

**The vengeful stalker** does not seek to establish or maintain an intimate relationship with their victim. Such stalkers usually have a specific grudge, whether real or imagined, against someone in authority. For example they may become angry over the actions or inaction of a political representative or administrator. Disgruntled ex-employees may also engage in this form of stalking and may target their former employers, co-workers or the entire company. Some vengeful stalkers are psychopaths, i.e. people without conscience or remorse. Some are delusional, (most often paranoid), and believe that it is they, in fact, who are the victims. Their underlying motive is one of revenge.

Former intimate partner stalkers and delusional stalkers can become vengeful for a variety of reasons. For example, when their victims obtain interdicts/injunctions against them, or marry/remarry.

Most typologies would recognise the categories of stalker described above although they may name them differently. Several typologies offer 'additional' categories. One typology includes '**sociopathic**' stalkers consisting of: "...serial

*rapists and serial murderers who characteristically stalk their victims but not from the point of view of seeking to initiate or maintain a relationship but rather to seek victims that fit the characteristics of an 'ideal victim' and then to facilitate their attack."*<sup>18</sup> A sociopathic stalker may stalk and harass a number of different victims, either sequentially or concurrently.

Another classification system proposes five categories of stalker<sup>19</sup> adding 'organised harassment' to the categories described above. This typology also includes a category of 'false victims' who suffer from what it terms 'munchhausen syndrome'.

**Organised harassment** is usually motivated by the prospect of financial or other gain. There may be more than one stalker, or a lone stalker may be supported by others and may be well funded and resourced. This type of behaviour could involve an organised campaign against a particular individual, group or organisation.

**Munchhausen syndrome** is typically used to describe people who feign illness to obtain medical treatment. Similarly, a person who claims to be the victim of a non-existent stalker is considered to be expressing a sign of Munchhausen syndrome. False victims, as they are sometimes known, use a variety of situations to attract attention to themselves. In some cases they may harass their own family and friends in order to fabricate false evidence or witness reports

## **SCOTTISH EXECUTIVE CONSULTATION**

In October 1999, the Scottish Executive announced its intention to review the law on stalking in Scotland. As a first step the Executive issued the consultation document '[Stalking and Harassment](#)' to a wide range of organisations likely to have an interest in this area. Responses to the consultation were due by 9 June 2000 but are not yet publicly available.

Four principal options for change are outlined in the Scottish Executive's Consultation Paper on stalking. These are to:

- rely on present legal provisions;
- make changes to current practice;
- modify current legislation to ensure that the law operates more effectively;
- introduce a more radical, new statutory offence to deal specifically with stalking and harassment.

To continue to rely on existing legal provisions to deal with cases of stalking, while arguably retaining the inherent flexibility of the common law, runs the risk that the

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<sup>18</sup> McAnaney K, Curliss, L and Abeyta-Price, A, 1993, 'From Imprudence to Crime: Anti-stalking Laws'. Notre Dame Law Review 819.

<sup>19</sup> See the UK Intelligence and Security web site at <http://www.intel-sec.demon.co.uk>. which proposes the categories: simple obsession; love obsession; erotomania (De Clerambault's syndrome); serial stalker; munchhausen syndrome and organised harassment.

Executive will be accused of not taking the issue sufficiently seriously. Also, while research has emphasised the importance of improved practices and training for the various criminal justice agencies which deal with stalkers and their victims<sup>20</sup>, procedural changes alone may not be sufficient to reassure victims and encourage reporting of stalking.

In relation to changes to the existing law the Executive have outlined two main options. First, minor or incremental changes to the law which would enable courts to do any or all of the following:

- to take account of previous convictions of a like nature when considering an application for a non-harassment order;
- to make non-harassment orders obligatory in cases involving stalking or harassment;
- to attach powers of arrest without warrant to any breach of a non-harassment order;
- to remove the requirement for corroboration where a non-harassment order is breached.

Secondly, introduce a new statutory offence to cover incidences of stalking and harassment.

The incremental 'solutions' outlined by the Executive would make the non-harassment order (NHO), currently available under the 1997 Act, the cornerstone of anti-stalking legislation. Taken together, the four incremental changes proposed would make NHOs easier to obtain and enforce. However, there would remain difficulties where non-specific offences such as breach of the peace are relied on to establish the existence of a 'course of action' amounting to stalking. Similarly, the Executive explicitly recognise in the consultation paper that the abolition of the requirement for corroboration would be inappropriate in the context of the Scottish criminal justice system and that it could breach Article 6 (right to a fair trial) of the European Convention on Human Rights<sup>21</sup>.

Realistically, this leaves only the introduction of obligatory non-harassment orders and attachment of the power of arrest without warrant to such orders. While such changes would no doubt increase the effectiveness of the 1997 Act, given the public disquiet over the issue of stalking it seems unlikely that such minor changes in the operation of the law would have a significant impact on people's perception of stalking as a serious crime or of their tendency to report such offences.

If, on the other hand, the intention is to emphasise the seriousness of stalking as a form of criminal behaviour this aim might be better achieved through the creation of a specific statutory offence or offences rather than adapting existing common law offences to fit. One commentator, for example, points out that:

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<sup>20</sup> Stalking and Domestic Violence', the Third Annual Report to Congress under the Violence Against Women Act, 1998, Chapter 5.

<sup>21</sup> Op.cit. paras. 33 – 36 and 39 of the Stalking and Harassment Consultation Document  
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*“It is important to recognise that stalking is a course of conduct which may combine a range of actions each of which on its own may not appear serious but when combined over a period have a serious impact on the victim causing harassment, distress, alarm inconvenience and often more serious impairment of the victim's psychological well-being”.*<sup>22</sup>

The argument here is that while existing common law and statutory offences can address some aspects of stalking, existing sentence disposals do not allow the courts to fully and consistently reflect the range and gravity of such behaviour.

Against this, it been argued that there would be difficulties in defining stalking adequately and consequent problems for prosecutors and courts in interpreting such definitions. However, this does not appear to have been a major disincentive to other jurisdictions. As noted above, for example, all 50 US states have taken a conscious decision to make stalking illegal in order to send a signal that such behaviour will not be tolerated in American society<sup>23</sup>. American experience suggests that ‘anti-stalking’ laws can be effective in, at the very least, highlighting the criminality of stalking which in turn encourages reporting and can lead to a better and more positive response from criminal justice agencies.

As in the US, it would still be open to prosecutors to bring charges other than, or in addition to, stalking in certain circumstances even where stalking formed part of the offending behaviour.

However, a vital pre-condition for changes to the law would be to establish the strengths and weaknesses of existing law and procedures in dealing with stalking<sup>24</sup>. In this respect, the Law Society of Scotland has warned of the dangers of introducing stand-alone Acts to deal with specific criminal law problems such as stalking. In the view of the Law Society *“disparate single issue statutes discourage a cohesive approach to improving Scottish criminal law”*<sup>25</sup>.

## **RISK ASSESSMENT**

By its nature stalking is a persistent offence with individual incidents lasting, on average, 1.8 years<sup>26</sup>. Stalking also has a significant potential for violence and has, in some cases, led to the death of the victim<sup>27</sup>. While it is important that sentences reflect the seriousness of the offence it is also important to protect victims from known stalkers through the development and application of effective risk

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<sup>22</sup> Allen, Michael J ‘Look Who’s stalking: Seeking a Solution to the Problem of Stalking. 1996

<sup>23</sup> ‘Stalking and Domestic Violence’, the Third Annual Report to Congress under the Violence Against Women Act, 1998. Chapter 5

<sup>24</sup> Paterson, A. @Stalking – What is it, what to do’. SCOLAG, No 271, May 2000.

<sup>25</sup> Law Reform in the 21<sup>st</sup> Century: A Manifesto for Change.

<sup>26</sup> Stalking and Domestic Violence’, the Third Annual Report to Congress under the Violence Against Women Act, 1998, Chapter 1, exhibit 23. The survey found that 2/3 of all cases lasted a year or less, that ¼ lasted between 2 and 5 years and that stalking by former intimates lasted on average twice as long (2.2 years) as stalking by non-intimates.

<sup>27</sup> For example the murder of Kerry-Anne Thompson by her stalker Kenneth Easton in Cowdenbeath in August 1997.

assessment and risk management techniques. A register of convicted stalkers could also prove a useful tool for the police, prosecutors and the courts.

It may be that the recommendations on risk assessment for 'high risk offenders' produced by the MacLean Committee on Serious Violent and Sexual Offenders, should be considered in relation to people convicted of stalking offences<sup>28</sup>. It may also be appropriate that, should a Risk Management Authority be established, this body should have responsibility for overseeing the risk assessment process for this group.

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**Research Notes** are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

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<sup>28</sup> 'A Report of the Committee on Serious Violent and Sexual Offenders', Scottish Executive, June 2000, SE 2000/68. See especially recommendations 1 to 9.