

Stalking Protection Orders

Statutory Guidance

The Protection from Stalking Act (Northern Ireland) 2022

Department of Justice
May 2024

CONTENTS

Section	Page
Introduction	3
Audience	3
Aims and purpose	4
When to apply for a Stalking Protection Order	5 - 9
Interim orders	9 - 11
What is the difference between a 'full' Stalking Protection Order and an interim order?	11
How to apply for a Stalking Protection Order and interim order	12
Commencing Proceedings in the Magistrates' Court	13 - 14
Service of the summons	14
The Hearing – Proceeding in the respondent's absence	14 - 15
Evidential Requirements	15
Terms for inclusion in the order	16 - 19
Applying for an order against a child or young person under the age of 18	20 - 21
Service of Stalking Protection Orders	22
Notification requirements	23 - 25
Breach	26 - 28
Variation, renewal and discharge of an SPO or an interim SPO	28 - 29
Appeals	29 - 30
Legal Aid	30

Introduction

1. The Protection from Stalking Act (Northern Ireland) 2022 received Royal Assent on 26 April 2022. The Act introduces a new civil Stalking Protection Order. The threshold to commence criminal proceedings for the commission of an offence does not need to be met for an order to be made. This allows for early police intervention in stalking cases.

2. **Where that threshold has already been met, a Stalking Protection Order is not an alternative to prosecution for stalking offences under the Protection from Stalking Act 2022.**

3. **A Stalking Protection Order can, however, be used to complement a prosecution of any offence where stalking behaviours are evident, in order to intervene early and protect the victim from risk of stalking. (See para 9 for further information.)**

4. This guidance is issued as statutory guidance under section 17 of the Protection from Stalking Act (NI) 2022.

5. The use of Stalking Protection Orders should be considered as part of local adult and/or child safeguarding and public protection procedures.

Audience

6. This guidance is for the police in the exercise of their functions in relation to Stalking Protection Orders. It is designed to assist police officers to make appropriate and proportionate assessments when considering whether or not to apply for, or to seek to vary, an order.

7. The information within this guidance may also be relevant to assist the work of other criminal justice agencies and statutory bodies, as well as non-governmental and voluntary organisations which may be associated with victims or others affected by stalking behaviour.

Aims and purpose

8. This guidance aims to provide strategic guidance to the police on the effective use of, and application process for, Stalking Protection Orders, including when to consider applying for an order and how to manage the subject of an order effectively.

9. This section should be read alongside the specific provisions in the Protection from Stalking Act (NI) 2022 in relation to applications for orders or interim orders.

10. The provisions in the Act relating to Stalking Protection Orders have been created to enable early police intervention, pre-conviction, to address stalking behaviours before they become entrenched or escalate in severity and to protect victims from more serious harm.

11. However, there is no restriction as to the stage of the criminal justice process at which an order may be made, and depending on the circumstances, an order could be made following conviction, acquittal or at any time after the conclusion of the criminal proceedings.

12. A Stalking Protection Order can only be made by the court, following an application from police under section 7 of the Act. Section 7(4)(b) of the Act allows that stalking behaviour that was carried out before section 7 commenced (i.e. stalking behaviour carried out before 26 April 2022), can be counted retrospectively when considering an application for an order.

When to apply for a Stalking Protection Order

13. A Stalking Protection Order is a civil order which can be sought by police and **no prior conviction for any offence, including stalking offences, is required to apply for an order** (see Annex A for the application process).

14. Applications are freestanding and the court has the power to consider an application and make a Stalking Protection Order at any stage, provided it is satisfied that all three criteria in section 8(2) of the Protection from Stalking Act 2022 are met as outlined below:

- The respondent has carried out acts associated with stalking (see Annex B);
- The respondent poses a risk of stalking to a person; and
- There is reasonable cause to believe the proposed order is necessary to protect the other person from that risk. (The person to be protected does not have to have been the victim of the acts mentioned above.)

15. The circumstances when the police may apply for a Stalking Protection Order are where:

- A victim has reported stalking behaviour, or it has come to the attention of police during a separate investigation or by other means (such as a third-party referral through the MARAC / PPANI processes or from another member of the public);
- At any point during the course of an investigation, up to and including the point of conviction, acquittal or at any time after the conclusion of the criminal proceedings, or where an investigation has not yet commenced; and

- There is a belief the **victim is at risk of harm** from the respondent and an order is necessary to protect them from such risk. Victim withdrawal or lack of engagement **should not** have an impact on the risk assessment, especially where police can clearly assess fear on the part of the victim.

16. It is important to note that stalking disproportionally affects women and girls; however, it is important to recognise that men and boys may be victims too. Stalking affects people of all ages and gender, and victims come from a wide range of backgrounds.

17. The investigating officer should consider whether to apply for an order at the start of every stalking investigation, whether in a domestic abuse context (such as stalking by a former intimate partner) or a case of so called ‘stranger stalking’. This allows for protection to be in place even if the case results in an acquittal.

18. The police can apply for an order against a person who is under the age of 18. These cases will be dealt with by the youth courts.

19. The police should consider applying for an order not just to protect the victim but also, where necessary, anyone connected to the victim who may also be at risk of being stalked by the respondent.

20. This scenario could arise if a perpetrator is stalking other people connected to that individual (such as family members, friends, or co-workers), knowing that this behaviour will impact on the individual who is the principal subject of the stalking acts. This is known as ‘stalking by proxy’.

21. Stalking Protection Orders can be applied for even if prosecution for the offence of stalking, **or any offence**, is not pursued, e.g. when there is not enough evidence to pursue prosecution or due to lack of engagement from or withdrawal by the victim.

22. Police will need to conduct an assessment of the risk posed by the respondent in order to decide whether to apply for a Stalking Protection Order.

23. **Investigators should consult with the victim at an early stage in this process as their views around the risks to them are important to consider**.

24. Police should ensure that an appropriate specialist stalking risk assessment or screening tool is used, in consultation with other relevant agencies or via an independent risk assessor where appropriate.

25. **This is to ensure that they have a detailed picture, where possible, that informs decisions throughout the Stalking Protection Order process.**

26. Stalking Protection Orders are not exclusive to cases of so called 'stranger stalking' and may also be used in a domestic abuse context where appropriate.

27. They may be relevant in cases of economic abuse which commonly occurs or continues after an intimate partner relationship has ended. The Suzy Lamplugh Trust have advised they see incidents of economic abuse form part of a wider pattern of stalking and recommend that an SPO should be applied for and not just consideration of the individual incident, e.g. the withholding of child maintenance.

28. The Trust also report that about 50% of people who contact the National Stalking Helpline are being stalked by ex-intimates (i.e. ex partners) and a further third have had some sort of prior acquaintance with their stalker.

29. The police should consider reasonableness when considering whether to apply for an order, taking into account the circumstances of the matter and the background to the behaviour.

30. The police should ensure that the victim reasonably finds the behaviour unwelcome, that the respondent ought reasonably to have known that, and that the behaviour can reasonably be regarded as posing a risk to the victim.

31. **Note that victims may not be fully aware that all of the behaviour to which they have been subjected may amount to stalking, e.g. if they have been completely unaware that a partner, family member or even a stranger had installed spyware.**

32. The risk of stalking posed by the respondent may be in respect of physical or psychological harm to the other person and/or physical damage to their property. Risk may arise from acts which the respondent knows or ought reasonably to know are unwelcome to the other person, **even if in other circumstances or individually the acts may appear in themselves harmless**.

33. For example, sending someone unwanted gifts or flowers in conjunction with other behaviour may constitute stalking behaviour. Examples of acts that may amount to stalking behaviour are outlined at Annex B. Please also refer to the Statutory Guidance on the Stalking Offence for further information.

34. The behaviour which forms the basis for an application can have taken place:

- **In any part of the United Kingdom, or abroad; or**
- **<u>Before or after</u> the commencement of section 7(4)(a) of the Protection from Stalking Act 2022.**

35. The victim may still be able to apply for other similar protective orders, such as Restraining or Non-Molestation Orders, though this will depend on the circumstances of each individual case.

36. Police may, however, consider applying for a Stalking Protection Order before or during an investigation for a stalking offence, **or any other offence where stalking behaviours occur,** for which a prosecution may be brought at a later stage.

37. The purpose of applying for the Stalking Protection Order in those circumstances is to **protect the victim from any stalking risk identified prior to or during the course of any stalking related investigation** and criminal proceedings.

Interim orders

38. An interim Stalking Protection Order is a **temporary order** imposing prohibitions and/or positive requirements as the court considers appropriate.

39. The purpose of an interim order is to **protect the victim during any period between the application for a full order and its determination**.

40. An application for an interim order is made by way of complaint.

41. This application may either be commenced at the same time as the main application or where the main application has been made but not yet determined.

42. Breach of any of the conditions of an interim order is a criminal offence carrying the same maximum penalty as breach of a full order.

43. Interim orders are intended to provide a **speedier process** to obtain an order when there is an **immediate risk of harm.**

44. For example, in cases where there are factors that include suicidal or homicidal ideation, but where further information or investigation is required to meet the criteria to obtain a full Stalking Protection Order or when the court is unable to provide the full order in time.

45. It is a matter for the courts to interpret whether or not it is just to make an interim order. If an application is properly made and supported, an interim order may be granted. The court may make an interim order if it considers it appropriate to do so.

46. It is expected that any interim order granted will be for a limited period of time to enable this additional information to be obtained/investigation to be undertaken and that, once complete, an application for a full order will be determined.

47. The process for making an application for an interim order is the same as that for a full Stalking Protection Order. The police may be required to provide a written statement for the court or provide evidence in person when applying for a Stalking Protection Order.

48. The court may, if it considers it appropriate to do so, make an interim Stalking Protection Order:

- Prohibiting the respondent from doing anything described in the order, and/or
- Requiring the respondent to do anything described in the order.

49. An interim Stalking Protection Order has effect only for a fixed period specified in the order and ceases to have effect on the determination of the main Stalking Protection Order application.

What is the difference between a 'full' Stalking Protection Order and an interim order?

50. When considering whether to make an **interim order**, the court can make one 'if it considers it **appropriate** to do so' [emphasis added] as per section 11(3) of the Protection from Stalking Act (NI) 2022.

51. This is a **lower threshold** than that required to make a 'full' order, where the court can make one only if it is 'satisfied' that an order is '**necessary** to protect another person' [emphasis added] from stalking as per section 8(2)(c) of the Protection from Stalking Act (NI) 2022. So, an interim order should potentially be made more quickly on an **immediate assessment of risk**.

52. Depending on the circumstances of each individual case, it is likely that the court will apply the civil standard of proof (balance of probabilities) to the fact-finding elements of a **'full'** SPO application (whether the respondent has carried out acts associated with stalking, and whether the respondent poses a risk associated with stalking to another person) alongside the fact-finding elements of an **interim** SPO application, namely treating it as an exercise of judgement or evaluation.

53. It is likely that the court will also apply the civil standard to the non-fact-finding element of both the 'full' SPO application (whether an order is necessary to protect another person), **and** the interim SPO application (whether it is appropriate to make an interim order), but will rather take the position that they represent an exercise of judgement, or evaluation of the circumstances of each individual case.

How to apply for a Stalking Protection Order and interim order

54. An application for an order or an interim order can be made by an officer of police (as delegated by the Chief Constable) in respect of a person who resides in Northern Ireland, or who the Chief Constable believes is in, or is intending to come to, Northern Ireland.

55. It is not necessary for the respondent to have a prior conviction for a stalking offence, **or any other offence**, for the police to apply for a Stalking Protection Order.

56. The court can make a Stalking Protection Order if it is satisfied that the conditions in section 8(2) of the Protection from Stalking Act 2022 are met – see para 14 above.

57. The court may make an interim order if satisfied that it is '**appropriate to do so',** pending determination of the main application.

58. An application for an order must be authorised by an officer not below the rank of Inspector.

Commencing Proceedings in the Magistrates' Court

59. An application for a 'full' Stalking Protection Order is made by way of complaint by the police to a magistrates' court. This means that the court will act in its civil capacity, and so the civil rules of evidence apply, and hearsay is admissible.

60. Depending on the circumstances of each individual case, it is likely that the court will apply the civil standard of proof (balance of probabilities) to the fact-finding elements of an SPO application (whether the respondent has carried out acts associated with stalking, and whether the respondent poses a risk associated with stalking to another person).

61. If and when the court finds that the person has carried out the acts, and poses a risk, it is likely that the court will also apply the civil standard to the third element of an SPO application (whether an order is **necessary** to protect another person) but rather treat it as being an exercise of judgement or evaluation.

62. This assessment is based on the judgment in the House of Lords in R (McCann) v Crown Court at Manchester [2003] 1 AC 787. This related to Anti-Social Behaviour Orders, which are similar to SPOs. This case does not undermine the position that the SPO is a civil order and therefore the procedural rights under Article 6 of the ECHR apply. Every person is entitled to a fair and public hearing, within a reasonable time, by an independent and impartial tribunal. Assessment of whether these safeguards have been met will be determined on the facts of each case in the context of relevant caselaw.

63. If the respondent is under 18, the complaint is made to a youth court.

64. The general provisions governing applications for civil orders in the magistrates' courts are as set out in Part VIII of the Magistrates' Courts (NI) Order 1981.

65. An application for an interim order is made by way of complaint. This application may either be commenced at the same time as the main application or where the main application has been made but not yet determined.

66. It is likely that the court will not apply the criminal standard of proof for any of the elements of an interim SPO application, thus treating it as an exercise of judgement or evaluation.

Service of the summons

67. Police will draft the summons and have it signed by a lay magistrate then process same for service on the respondent. Police will then lodge the served, endorsed summons with the court for case entry.

68. The provisions governing the process of summons are largely set out in the Magistrates' Courts (NI) Order 1981. New specific Magistrates' Courts (Stalking Protection Orders) Rules (NI) 2023 have been made which include a form for the summons.

The Hearing – Proceeding in the respondent's absence

69. If the respondent fails to attend the hearing, the court may either:

- Hear the application for the Stalking Protection Order in the respondent's absence. If the Stalking Protection Order is granted, there will be no need for the court to consider the interim order;
- Adjourn the main application and consider an interim order if laid; or

- Adjourn the main application, and an interim order if laid, to another date.

70. The court may hear an application for the main order or any interim order in the respondent's absence.

71. The court needs to be satisfied either that the respondent was present at an earlier hearing or that the respondent has been served with the summons by one of the prescribed methods within what the court decides is a reasonable time before the hearing.

72. Before the court can make an interim order in the respondent's absence, the respondent must have been summonsed to answer the interim order complaint, alongside the summons for the main application.

Evidential Requirements

73. The court may consider hearsay evidence in addition to live testimony from witnesses to determine the application for a Stalking Protection Order. Hearsay evidence is permitted in civil proceedings in NI by the Civil Evidence (NI) Order 1997.

74. Civil proceedings are defined as civil proceedings before any court or tribunal in relation to which the strict rules of evidence apply. When the magistrates' court is acting in its civil capacity, then the civil rules of evidence apply and hearsay is admissible.

75. Whilst the Act provides for the police to apply for Stalking Protection Orders to reduce the potential impact on vulnerable victims, there may be circumstances where it is appropriate for the victim or other witness to attend the application hearing to provide evidence in support of the application.

76. When completing the application for an SPO, if the police decide that witness attendance is necessary and special measures are required, they should complete the relevant 'Special Measures' section of the SPO application confirming the witness's name, the reason special measures are sought, and the type of measure sought.

77. The court will consider the request on receipt of the application and prior to listing the hearing. Police can then inform the witness in advance of the hearing whether the request has been successful.

Terms for inclusion in the order

78. Within an application for a Stalking Protection Order, or an interim order, police can request both prohibitions and/or requirements within an order to protect the victim from the risk of stalking. However, the final decision as to which conditions to include within an Order is for the magistrates' court to take.

79. A person who, without reasonable excuse, breaches a Stalking Protection Order or an interim Stalking Protection Order commits a criminal offence.

80. The courts, in line with their responsibilities under the Human Rights Act 1998 as a public body, will as far as possible have to interpret the Protection from Stalking Act (NI) 2022 in a way that is compatible with the European Convention on Human Rights (ECHR), including the Article 2 *right to life for the victim* and the Article 8 *right to privacy for the respondent*.

81. Any interference with the rights to life and privacy of a person would have to be justified for one of the reasons set out in Article 2 and Article 8 and be proportionate.

82. It is best practice for police to engage with the victim to obtain their views on the most appropriate conditions to request within an application for an order.

83. The application must effectively demonstrate the necessity for the order, the conditions requested and the risk of harm (which may be psychological and/or physical) posed, as well as that the conditions suggested are proportionate to the harm posed as per the criteria in section 8(1) of the Protection from Stalking Act (NI) 2022.

84. An order has effect for a fixed period specified in the order or until a further order is made. Where a fixed period is specified in the order, it must be for a period of at least two years. Different periods may be specified in relation to different prohibitions or requirements in the terms of the order, depending on the circumstances.

85. A prohibition or requirement has effect in all parts of the United Kingdom unless expressly limited to a particular locality.

86. The conditions of an order could include **prohibiting** the respondent from:

- entering certain locations or defined areas where the victim resides or frequently visits;
- contacting the victim by any means, including via telephone, post, email, SMS text message or social media;
- contacting or interacting with the victim via third parties, for example friends or family;
- making reference to the victim on social media either directly or indirectly;
- making vexatious applications to the civil court (including the Family Court) which reference the victim;
- recording images of the victim;
- using any device capable of accessing the internet unless it has the capacity to retain and display the history of internet use;
- physically approaching the victim (at all, to within a specified area or as outlined on a map); and/or
- engaging in any form of surveillance of the victim by any means.

87. The conditions of the order could include positive requirements (if available) to:

- attend an assessment of suitability for treatment;
- attend an appropriate perpetrator intervention programme;
- attend a mental health assessment;
- attend a drugs and alcohol programme;
- surrender devices;
- provide the police with access to social media accounts, mobile phones, computers, tablets and passwords/codes; and/or
- sign on at a police station.

Each application should be considered on its own circumstances when deciding the most appropriate conditions and the above lists are not exhaustive.

88. When drafting an SPO application police are advised to ensure that any conditions sought in applications are clear, specific and proportionate to the circumstances to assist the court which is considering the application to impose the most appropriate conditions.

89. The Public Prosecution Service (PPS) will be involved if an order is breached and the breach prosecuted. It may, therefore, also be sensible to seek PPS advice on the wording of unusual or complex conditions to ensure that any breaches will be capable of being proved to the criminal standard of proof.

90. Police should consider seeking specialist advice regarding the terms which they request be included in the order. They may also wish to consider investigating the availability of relevant local services and programmes.

91. Police making an SPO application should ensure that any positive requirements that are available and included within an application, such as perpetrator intervention programmes, are appropriate to the respondent's stalking behaviour and the circumstances identified.

92. Police should also interrogate relevant police records to establish whether the respondent is already subject to another order or injunction. If so, they must ensure that the proposed conditions within the application do not contradict the terms of any existing order.

93. Police should ensure as far as is practicable that any prohibitions and requirements requested within an application do not conflict with the respondent's religious beliefs or times when they would normally attend work or education as prescribed in section 8(4) of the Protection from Stalking Act (NI) 2022. The police should take into consideration whether the respondent works with the victim or attends the same religious institution.

94. A Stalking Protection Order and an interim Stalking Protection Order must specify:

- the date on which the order is made;
- the period for which it has effect (at least 2 years). This may be fixed for a Stalking Protection Order but must be fixed for an interim order. An interim order will expire upon the determination of the main application;
- each prohibition or requirement which applies to the subject;
- whether any prohibition or requirement is expressly limited to a particular locality and, if it is, what the locality is; and
- whether any prohibition or requirement is subject to a fixed time period which differs from the period for which the order has effect and, if it is, what that period is.

Applying for an order against a child or young person under the age of 18

95. Persons under the age of 18 can be protected by a Stalking Protection Order.

96. Police have a duty to have regard to the need to safeguard and promote the welfare of a child or a young person when exercising their functions; in all investigations the principle that the welfare of the child is paramount should be observed.

97. Persons under the age of 18 can be a respondent to an order.

70. Children and young people aged from 10 years old up to their 18th birthday, who are respondents to an order, will be subject to the same procedure as adults, but their applications will be dealt with similarly by the youth courts.

71. The Criminal Justice (Children) (Northern Ireland) Order 1998 applies to children and young persons in such summary proceedings in youth courts and magistrates' courts.

72. Under article 15 of the Criminal Justice (Children) (Northern Ireland) Order 1998, the court must in relation to a child under 16 (or may otherwise in any other case) require the attendance of a parent or guardian (which may include the relevant health and social care trust), except in limited circumstances.

73. Every effort should be made in advance of a hearing to ensure a parent or guardian attends, so that the court does not need to require their attendance.

74. When applying for a Stalking Protection Order when a young person is the respondent, the following principles should apply:

- That there is early consultation with and participation of the Youth Justice Agency (YJA) in the application process where relevant. The application should be supported by a record of the contact with the YJA, identifying that their views about the order have been sought.

- That the nature and extent of any support required is based on a structured assessment that takes into account the needs of the young person and the imminent risk, for example of psychosocial damage.

- That the welfare of the child or young person is the paramount consideration, in line with local safeguarding procedures.

- That the requirements of all other orders and sentences that may already be in existence are taken into account to ensure that any requirements made by these orders do not restrict a young person's ability to complete other current orders or sentences, and the combined burden of requirements is taken into account to ensure the young person has the capacity to comply.

75. Children's Services Co-operation Act (NI) 2015 requires the police to ensure they promote the welfare of and safeguard children when carrying out their duties, and the 'no order' principle (that alternatives to an order should be considered first) should apply in all cases.

Service of Stalking Protection Orders

76. The designated officer for the court must serve a copy of a Stalking Protection Order or interim Stalking Protection Order as soon as reasonably practicable after such an order has been made.

77. The order must be served by one of the methods set out in The Magistrates' Court (Stalking Protection Orders) Rules 2023.

78. If a respondent attends the hearing of the application, they should be provided with a copy of the order at court, where practicable.

79. Where the respondent is a child or young person, a copy should also be given to their parent or guardian if present.

80. If the respondent does not attend the hearing the order must be served by one of the other prescribed methods.

81. The order should be accompanied with a written notice informing the respondent:

- Of the notification requirements
- That a breach of any of the prohibitions or requirements contained in the order without reasonable excuse, and/or the failure to comply with the notification requirements without reasonable excuse, and/or to knowingly provide false name and address details, is a criminal offence.

82. Once a Stalking Protection Order has been made it should be recorded on police systems.

83. This should include the date the order was issued and the expiry date, individual force owners and reference numbers.

84. Any conditions that are imposed as part of the order can also be added.

85. This will enable all users who need to view the associated record to see the information in respect of the order being issued and those conditions attached.

86. There are additional risk factors which should be taken into consideration when managing the subject of an order, for example, the respondent's access to legal firearms, competency with firearms/weaponry, mental health difficulties, substance misuse, etc.

87. Investigators should conduct such enquiries as are necessary to identify any additional risk factors and should include a plan of actions to mitigate the risks.

Notification requirements

88. A person subject to a Stalking Protection Order/interim Stalking Protection Order must notify the police of their name(s) and their home address, within a period of 3 days from the date when the order is served.

89. If the name used by or the address of the person changes during the duration of the order, they must notify the police within a 3-day period of that change.

90. The notification requirements in section 14 of the Protection from Stalking Act (NI) 2022 do not apply to a person who is already subject to notification requirements under *Part 2 of the Sexual Offences Act 2003; Part 8 of the Justice (NI) Act 2015; or Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015.*

91. If any of the latter were to cease before the expiry of the Stalking Protection Order, section 14 would then apply, with the deadline for notification being 3 days after they cease to be subject to any of the above Acts.

92. A person whose home address is in Northern Ireland gives a notification by:

• attending at a police station in their local police area, and

• giving an oral notification to a police officer, or to any person authorised for the purpose by the officer in charge of the station.

93. The Protection from Stalking Act (NI) 2022 states that 'home address' in relation to a person means:

- the address of the person's sole or main residence in Northern Ireland, or
- if the person has no residence in Northern Ireland, the address of the person's sole or main residence in Great Britain, or
- if the person has no residence in the United Kingdom, the address or location of a place in Northern Ireland where the person can regularly be found and, if there is more than one such place, such of those places as the person may select, or
- if the person has no residence in the United Kingdom, and there is no such place in Northern Ireland, the address or location of a place in Great Britain where the person can regularly be found and, if there is more than one such place, such of those places as the person may select.

94. Any notification provided to police must be acknowledged in writing and recorded in such a form as the Department may direct.

95. To verify the identity of a person giving notification the police can request to take the person's fingerprints and/or photograph. The person giving notification must allow the officer to do so.

96. The person subject to the order commits a criminal offence if they either fail (with no reasonable excuse) to comply with these notification requirements or provide information in accordance with those requirements that they know to be false.

97. This is an either way offence punishable on summary conviction with imprisonment for a term not exceeding 6 months or a fine or both, or on conviction on indictment, with imprisonment for a term not exceeding 5 years or a fine or both. However, the person may not be prosecuted more than once for the same failure to notify.

98. A person commits an offence on the day on which the person first fails without reasonable excuse to comply with the notification requirements under section 14 of the Protection from Stalking Act 2022.

99. An example of a reasonable excuse would be if the respondent is in prison, another form of custody or hospital. Where the police systems show that the respondent was in custody throughout the notification period and, therefore, unable to attend a police station, the respondent shall not be arrested for breach of the notification requirements.

100. When a person who is subject to a Stalking Protection Order while in prison is released from prison, the Northern Ireland Prison Service should notify the police of the anticipated release date so that monitoring of the notification requirements for the respondent can be appropriately managed.

Breach

101. A person who, without reasonable excuse, breaches a Stalking Protection Order or an interim Stalking Protection Order commits a criminal offence.

102. The police are responsible for monitoring the Stalking Protection Order and investigating breaches under the Protection from Stalking Act (NI) 2022 legislative provisions.

103. Where a person fails without reasonable excuse to comply with any prohibition or requirement of a Stalking Protection Order or an interim Stalking Protection Order they are committing an offence.

104. An offender convicted of such an offence will be punishable either way on summary conviction with imprisonment for a term not exceeding 6 months or a fine or both, or on indictment, with imprisonment for a term not exceeding 5 years or a fine or both. Breach of the requirements is an arrestable offence.

105. An application for a Stalking Protection Order may itself, therefore, also be a trigger for escalation by the stalker.

106. It is crucial that the police understand these risks and take urgent action in cases where orders are breached.

107. The onus should not be on the victim to ask the police to arrest the respondent when a Stalking Protection Order is breached; making an urgent arrest should be the standard response to breaches of Stalking Protection Orders.

108. A breach of an order will be a criminal offence punishable either way on summary conviction with imprisonment for a term not exceeding 6 months or a fine or both or, on indictment, with imprisonment for a term not exceeding 5 years or a fine or both.

109. In breach proceedings, a copy of the original Stalking Protection Order or interim Stalking Protection Order, certified by the designated officer of the court at which it was made, is admissible as evidence of its having been made.

110. The weight attached to it will be the same as if it were presented orally at the breach proceedings.

111. A single incident would be a breach of the order. A pattern of behaviour is not required to breach a Stalking Protection Order.

112. A breach of the order may be used as bad character evidence in subsequent court proceedings for the original substantive offence.

113. A case file should be prepared in a timely manner.

114. Prosecutions for breaches will be conducted by the PPS. Cases will be reviewed in the normal way in accordance with the Code for Prosecutors, and sufficient evidence will need to be gathered before breach proceedings are commenced.

115. Cases are triable either summarily in a magistrates' court or on indictment in the Crown Court. Any cases against children and young people will normally be heard in the youth court.

116. The standard of proof for breach of an order will be the criminal standard, i.e. beyond reasonable doubt.

117. Breach of order under section 13 will apply if provisions within the order make it clear that they should be complied with in all parts of the United Kingdom and/or everywhere outside the United Kingdom. In order for behaviour to constitute a breach offence in Northern Ireland the offending must contain a **substantial connection** to the jurisdiction.

118. An example might be where a respondent subject to a Stalking Protection Order is undertaking stalking behaviour (i.e. making any form of contact including online) while in the United Kingdom or anywhere outside the United Kingdom, with the victim who is located in Northern Ireland.

Variation, renewal and discharge of an SPO or an interim SPO

119. The police or the respondent can apply to a magistrates' court for an order varying, renewing or discharging a Stalking Protection Order or interim Stalking Protection Order. The application is made by way of complaint to the magistrates' court.

120. It is expected that the police will engage with the victim when making an application for the order to be varied, renewed or discharged.

121. The court must hear from the respondent and any chief officer of police who wishes to be heard before making a decision they consider appropriate on an application to vary, renew or discharge an order.

122. The court cannot impose additional prohibitions and requirements on an order unless it is necessary to protect a person at risk.

123. Nor can the court discharge an order before the end of the 2-year period without the consent of the respondent and the chief officer of police who applied for the order.

124. Copies of the order dismissing the application, the variation order, the order for renewal or the order for discharge should be given or sent by first class post to the respondent by the court.

125. If the order requires the respondent to comply with the notification requirements, copies should be sent to all persons who were given notice of the respondent's obligation to comply with the notification requirements.

Appeals

126. An appeal against an order is made in the County Court or Court of Appeal.

127. A respondent can appeal to the County Court or Court of Appeal against:

- The making of an interim or substantive Stalking Protection Order;
- The making of an order to vary, renew or discharge an order following an application by the police; or
- The refusal of the respondent's application to vary or discharge an order.

128. The chief officer of police who applied for the Stalking Protection Order, interim order or order to vary, renew or discharge can appeal to the County Court or Court of Appeal against:

- The refusal to make an interim or substantive Stalking Protection Order;
- The refusal of the police's application to vary, renew or discharge an order; or
- The making of an order to vary, renew or discharge an order, following an application made by the respondent.

129. At the hearing of an appeal, the County Court or Court of Appeal may make such further orders as give effect to its determination of the appeal, including incidental or consequential orders.

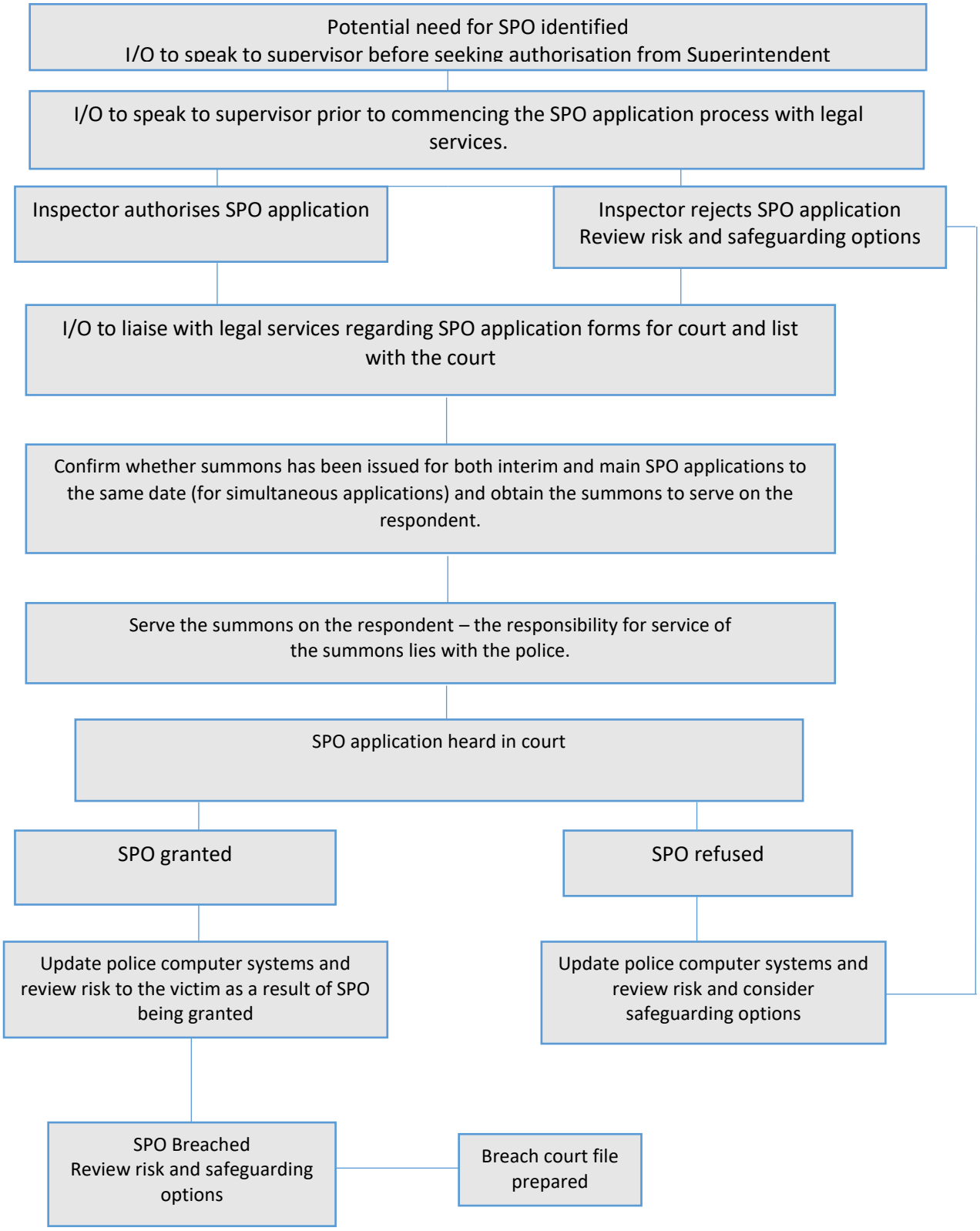
130. Any order made by the County Court or Court of Appeal on appeal shall be treated for the purpose of any later application for variation or discharge as if it were the original magistrates' court order, unless it is an order directing that the application be reheard by the magistrates' court.

Legal Aid

131. Legal aid may be available to subjects of a Stalking Protection Order or an interim Stalking Protection Order for the making, discharging, renewing, varying and appealing of the order, as well as in relation to proceedings for breach of an order or failure to comply with notification requirements. Further details on the process for applying for legal aid can be found at https://www.nidirect.gov.uk/articles/legal-aid-schemes

Annex A

Process Map for PSNI application for Stalking Protection Order (SPO)



For Authorising Officers - Process map for authorising an application for a Stalking Protection Order (SPO)

Potential need for Stalking Protection Order (SPO) identified
I/O to speak to supervisor prior to commencing the SPO application process with legal services.

An application for an order must be authorised by an officer not below the rank of Inspector (authorising officer (AO) on behalf of Chief Constable)

An application may be for an interim and/or full SPO or a variation, renewal, discharge or appeal

The AO should ensure the I/O:

- has completed an S-DASH stalking screening assessment
- has consulted with the victim, as their views around the risks to them are important to consider
- is conducting a thorough investigation to identify any substantive stalking offences
- has completed their section of the Inspector's authority
- has briefed the AO on circumstances of the incident and reason why an order is sought.

The police should consider applying for an order, where it appears to the chief officer that:

- the respondent has **carried out** acts associated with stalking
- the respondent poses a **risk** of stalking to a person, whether or not they were the victim of the acts associated with stalking
- there is reasonable cause to believe the proposed order is necessary to **protect** any other person from that risk (this could be anyone connected to the victim who may also be at risk of being stalked by the respondent).

The AO must justify that an SPO is proportionate and necessary to protect the person or another person from risks associated with stalking by the suspect, balancing the Article 8 rights of the victim against those of the respondent. The AO must consider how best to reduce or prevent the risk of harm to the victim.

The AO should note that victims may not be fully aware of all acts of stalking that have taken place against them (such as monitoring and surveillance activities).

SPO application **authorised** by Inspector

Review risk and consider

safeguarding options

Complete authorisation form and update I/O.

SPO application – **not authorised** by Inspector

Update I/O

Annex B

Acts associated with Stalking (illustrative)

- Following a person
- Contacting or attempting to contact a person by any means
- Publishing any statement or other material
    - Relating or purporting to relate to a person; or
    - Purporting to originate from a person or from any other person
- Monitoring the use by a person of the intranet, email or any other form of electronic communication
- Entering any premises
- Loitering in any place (whether public or private)
- Interfering with any property of the person or of any other person
- Giving anything to a person or any other person or leaving anything where it may be found by, or given to or brought to the attention of that person, or any other person
- Watching or spying on a person
- Acting in any other way that a reasonable person, or a reasonable person who has particular knowledge of a person, would expect to cause that person to suffer fear, alarm or substantial distress
- Contacting the victim's children, partner, other family members, friends, co-workers or other third parties
- Stalking by proxy (stalking people connected to the 'primary' victim)

- Sending unsolicited gifts or other items to the victim (this doesn't have to be done directly by the perpetrator but can be facilitated by delivery services like Amazon, DPD, Deliver Roo and Just Eat as an example as a way of intimation. Whilst sending someone a pizza via Deliver Roo may seem harmless by itself, within the context of stalking it causes distress to the victim)
- Hacking the victim's social media accounts, email, phone or computer
- Using multiple social media accounts, email addresses or phone numbers to contact the victim, which may include the use of aliases
- Information gathering on the victim, such as by contacting third parties, searching public records, stealing private documents belonging to the victim or viewing them without the victim's knowledge
- Impersonating the victim in order to gather information about them
- Bringing vexatious litigation or making vexatious counter-allegations against the victim, or otherwise using official processes to perpetuate contact with the victim, cause them distress or drain their resources
- Cancelling or procuring goods or services to the victim
- Joining the same gym, church, medical practice, educational course, workplace, sports club or other group as the victim
- Criminal damage or breaking in to the victim's home, garden or vehicle
- Creating or exploiting disputes between the victim and their friends, family or wider support network, to isolate the victim and make them dependent on the perpetrator

- Creating social media posts or websites containing malicious or personal content relating to the victim, or referencing things which would have meaning only to the victim
- Threatening violence against the victim, or actually attacking them (physical assault, sexual assault)
- Monitoring the victim by planting tracking or bugging devices, or by installing or activating a programme or application on the victim's personal devices
- Publishing or threatening to publish personal information or images relating to the victim (so called 'revenge porn')
- Threatening suicide or self-harm, or otherwise manipulating the victim to respond to contact