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| **Stalking and Harassment**  **Standard Operating Procedure** |

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| This SOP provides clear direction and procedural instruction to provide a consistency of response in accordance with force policy, however it is recognised that policing is a dynamic profession and the standard response may not be appropriate in every circumstance. In every situation, your decisions and actions should be supported by the National Decision Model and based on the values and ethics of Police Scotland. You may be expected to provide a clear and reasonable rationale for any decision or action which you take. |
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| **Owning Department:** | Domestic Abuse Coordination Unit |
| **Version Number:** | 4.00 (Publication Scheme) |
| **Date Published:** | 23/04/2021 |

**1. Purpose**

This Standard Operating Procedure (SOP) supports the Police Service of Scotland, hereafter referred to as Police Scotland, Domestic Abuse Policy. **Link has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.**

It defines the expected policing response to, and investigation of Stalking and Harassment.

If appropriate in the circumstances, this SOP should be read in conjunction with the Stalking and Harassment Toolkit, Domestic Abuse Investigation SOP and the Domestic Abuse Toolkit. These provide practical advice and guidance for officers and staff dealing with reports of Stalking and Harassment. **Links have been removed due to their content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law enforcement.**

**2. Stalking – Definition**

Stalking is defined as;

* Two or more behaviours towards a victim which cause, are intended to cause or where the perpetrators behaviour is reckless as to whether it causes the victim to suffer fear and alarm.

Fear and alarm covers physical or psychological harm, or apprehension or fear for the safety of the perceived victim or any other person.

Stalking is committed both offline, in the physical environment, and online, in the digital or cyber environment and stalkers may offend using a mixture of both.

Stalking and Harassment can occur both within and out with domestic relationships e.g. between work colleagues, neighbours or strangers who have not formed any intimate relationship. If circumstances relate to domestic abuse please refer to the

Domestic Abuse Investigation SOP and the Domestic Abuse Toolkit. . **Links have been removed due to their content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.**

**3. Roles and Responsibilities**

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| **Operational Policing**  **(Local Policing Divisions and Contact, Command and Control Division)** | |
| **Role/Post** | **Expected Response** |
| Service Advisors and Public Enquiry & Support Assistants | * Provide appropriate reassurance and support during the report. * Gather and record sufficient information regarding the individual/circumstances presenting, to allow the police response to be assessed using the appropriate model. * Complete relevant system checks for background information. * Create command and control incident and append relevant and available information. * Provide the caller with relevant assurance and information on the policing response. |
| Area Control Room (ACR) Controller | * Take control of the incident and review the information presented. * Consider any further system checks which might be necessary. * Identify and allocate appropriate resources to attend. * Ensure the officers attending are aware of all available and relevant background information. * Notify relevant divisional supervisors (most commonly the local Sergeant). * If at any stage new information is received reassess the police response.   Manage the incident to a conclusion and close it in line with Scottish Crime Recording Standards (SCRS) guidance. **Link has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.** |
| Attending/Investigating Officer | * Attend and assume operational responsibility. * Prioritise the safety and wellbeing of the victim. * Conduct a full and thorough investigation, secure all available inculpatory and exculpatory evidence and take appropriate action.   Where appropriate, afford the victim the opportunity to specify gender of the interviewing officer (officer noting full statement) as required by Victim and Witnesses (Scotland) Act 2014. **Link has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.**   * Where domestic abuse is an element and it is suspected that a child has seen or heard or experienced stalking and harassment, the attending officers should make all efforts to speak with the child to establish; if they are a witness to domestic abuse; if they feel safe; and if there is anything that is upsetting them.   A Victim Care Card (Form 144-002) should be completed and explained if appropriate. **Link has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.**   * Complete the relevant administrative updates including the submission of crime and Interim Vulnerable Persons Database (iVPD) reports to maintain an accurate record of events. * A Scottish Intelligence Database (SID) log should be submitted where it has been established that a crime has been committed. This should be completed prior to the end of shift where possible using the Stalking header. * Ensure supervisory officers are kept updated throughout the initial response and investigation. * Ensure the victim is regularly updated with investigative progress. * Proactively pursue the perpetrator so they can be processed promptly by the Criminal Justice System. * Augment existing criminal law by making the victim aware of civil remedies which may be available to them. |
| Supervisory Officers | * Assume overall management responsibility for the policing response/investigation and provide support to those in attendance. * Ensure that a full and thorough investigation and appropriate safety planning has been considered and undertaken. * Record all supervisory reviews on command and control and other administrative systems. |
| Criminal Justice Services Division | Where domestic abuse is an element Criminal Justice Services Division should refer to the Domestic Abuse Investigation SOP and Joint Protocol **Links have been removed due to their content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.** |

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| **Specialist Domestic Abuse Investigation Units**  **(Local Policing Divisions)** | |
| **Role/ Post** | **Expected Response** |
| Domestic abuse Investigation Unit or Equivalent/Investigating Officer | * Review all actions and take appropriate measures to ensure the safety and wellbeing of the victim, their family and any other relevant persons. * Ensure the victim has been offered and fully understands potential access to victim support services.   Where appropriate, afford the victim the opportunity to specify gender of the interviewing officer (officer noting full statement) as required by Victim and Witnesses (Scotland) Act 2014. **Link has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.**   * Conduct a full and thorough investigation, secure all available inculpatory and exculpatory evidence and take appropriate action.   Ensure relevant administrative updates are undertaken including submission of crime; **[Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law enforcement**.**]** and iVPD domestic abuse/adult or child wellbeing concern or adult or child protection reports as appropriate.   * Ensure line management are kept updated throughout the investigation. * Ensure the victim is regularly updated with investigative progress. * Proactively pursue the perpetrator so they can be processed promptly by the Criminal Justice System. |
| Supervisory Officers | * Assume overall management responsibility for the investigation and provide support to the investigating officer. * Ensure relevant administrative updates have been undertaken, including submission of crime: **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law enforcement** and iVPD adult concern/child concern reports as appropriate. * Record supervisory reviews on appropriate administrative systems. * Oversee suspect handling and ensure all reasonable investigative opportunities have been exhausted. |
| Domestic Abuse Coordination Unit  (DACU) | * Maintain overall responsibility for coordinating the Police Scotland policy in relation to Stalking and Harassment. * Monitor and review force practice and procedures in respect of Stalking and Harassment. * Ensure guidance documents are contemporary, relevant and accurately reflect legislative changes. * Ensure policy in relation to Stalking and Harassment aligns to other relevant Public Protection policy. * Develop and enhance close working relationships with key partner agencies and support groups to enhance service delivery and identify prevention and intervention opportunities. * Raise awareness of Stalking and Harassment and develop suitable training. * Prepare briefing papers, responses and reports. * Provide administrative, secretariat, policy and statistical support as directed by the force Stalking and Harassment lead. |

**4. Legislation – Section 39 Criminal Justice and Licensing (Scotland) Act 2010**

The offence of stalking is complete when a person engages in a course of conduct (on at least two occasions) where either:

* The conduct is intended to cause fear and alarm, or
* The person ought to have known the conduct, in all circumstances would cause fear or alarm (recklessness) **and** it does in fact cause the victim to suffer fear or alarm.

Fear or alarm covers physical or psychological harm or apprehension or fear for safety of the perceived victim or any other person.

**Use of Section 39 (Stalking) and Section 38 (Threatening or Abusive Behaviour) of the Criminal Justice and Licensing (Scotland) Act 2010**

Where there is sufficient evidence to provide the Procurator Fiscal (PF) with a choice, a charge of stalking (Section 39) must always be preferred before a charge of threatening and abusive behaviour (Section 38).

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The statutory charges of stalking (Section 39)and threatening or abusive behaviour (Section 38) must always be preferred before a common law Breach of the Peace charge.

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**Alternative Charges**

The Act provides that Section 38 is an implied alternative to Section 39 where the evidence is not sufficient to prove the offence of stalking but is sufficient to prove a charge of threatening or abusive behaviour under Section 38.**Links have been removed due to their content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.**

Preference must always be given to libelling Section 39 first and foremost. **Links have been removed due to their content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.**

Where domestic abuse is an element of the case and there is evidence of a course of conduct of abusive behaviours including stalking, then Section 1 of the Domestic Abuse (Scotland) Act 2018, may be recorded rather than a Section 39. **Links have been removed due to their content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.**

**5. Victim and Witness Considerations**

In terms of Section 8 of the Victim and Witnesses (Scotland) Act 2014 **Link has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible**, a person who is, or appears to be, the victim of stalking must be afforded the opportunity to specify the gender of the interviewing officer (deemed to be the officer noting a full statement).

**6. Additional Procedures**

**Victims**

Stalking has a devastating impact on victims and the unwanted and repeated attention is likely to leave them feeling anxious and concerned. However, the accumulated effect over time can have a severe impact on a victim’s psychological, physical and financial health.

Because they have little control over the stalker’s behaviour, victims often feel helpless, they experience stress, worrying over not only what is currently happening but also what might happen next and how the stalking will end.

Officers and staff must understand that victims of stalking and harassment can be suffering from trauma and they must endeavour to respond and engage with them compassionately and effectively.

**Suspects**

Where it is established or suspected that a crime has been committed then the suspect should be arrested under the powers of Section 1 of the Criminal Justice (Scotland) Act 2016 **Link has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.**. There is an expectation that an interview should be conducted in order to complete a thorough enquiry and secure all available evidence. However, where it is clear that a strong sufficiency of evidence to charge has already been obtained officers should consider the necessity and proportionality of interviewing the suspect. Such considerations need to be taken in the context of the statutory duty under Section 50 of the Criminal Justice (Scotland) Act 2016 **Link has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible**, not to detain a person in custody unreasonably or unnecessarily.

In all cases where it is assessed to be appropriate to release a suspect on investigative liberation or undertaking, officers must, before the suspect is released, consider any conditions to be attached to their release.

Officers must fully assess any risk posed to the victim, witnesses or investigation and a divisional officer must notify victims as soon as possible, after a decision has been made to release a suspect, in any circumstances. Wherever possible, this will be done before the suspect is released. Any conditions of release must be explained to the victim.

**Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law enforcement** **Reporting to Crown Office Procurator Fiscal Service (COPFS)**

In all cases of Stalking and Harassment where there is sufficient corroborative evidence of a crime, the matter should be reported to COPFS. Where domestic abuse is an element of the case officers should report using the Domestic Abuse SPR2 template. **Link has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible.**

**Non Harassment Orders (NHOs)**

Section 8 of the Protection from Harassment Act 1997 **Link has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002,** **Section 25, Information otherwise accessible** provides that every individual has a right to be free from harassment and, accordingly, a person must not pursue a course of conduct which amounts to harassment of another and –

* Is intended to amount to harassment of that person; or
* Occurs in circumstance where it would appear to a reasonable person that it would amount to harassment of that person.

Harassment of a person includes causing the person alarm or distress and a course of conduct must involve conduct on at least two occasions.

**Applying for Non-Harassment Order (NHO)**

An NHO is a civil order which victims can apply for (domestic or otherwise) through a solicitor.

In criminal proceedings (domestic or otherwise), where the perpetrator is convicted of an offence involving harassment of a person, the PF can apply to the court to grant an NHO in addition to any other disposal which might be made.

An NHO through criminal proceedings is not made automatically and officers are required to provide supporting evidence for any subsequent application for an NHO within the Remarks section of the SPR2 in all such cases the police must first obtain the views of the victim on;

* The need for a non-harassment order and
* The appropriate conditions to be included in any such order.

There must be a charge or charges libelled that show conduct on more than one occasion before the PF can consider seeking an NHO on behalf of the victim.

**NB. The PF will be unable to apply for such an order if this information is not included in the SPR2.**

**Breach of Non-Harassment Orders**

Section 234A of the Criminal Procedure (Scotland) Act 1995 details that breach of an NHO is a criminal offence which can be punishable by imprisonment. Where it has been established or suspected that the conditions of an NHO have been breached the suspect should be arrested under power of Section 1 Criminal Justice (Scotland) Act 2016.

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**7. Key Contacts**

National Stalking Helpline 0808 802 0300

Scottish Women’s Rights Centre 0808 801 0789

Victim Support Scotland 0800 160 1985

# Compliance Record

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| **Equality and Human Rights Impact Assessment (EqHRIA):**  **Date Completed / Reviewed:** | 08/03/2021 |
| **Information Management Compliant:** | Yes |
| **Health and Safety Compliant:** | Yes |
| **Publication Scheme Compliant:** | Yes |

# Version Control Table

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| **Version** | **History of Amendments** | **Approval Date** |
| 1.00 | Initial approved version | 25/03/2013 |
| 2.00 | Sections on Matrimonial Homes (Family Protection)(Scotland) Act 1981and Rent (Scotland) Act 1984 removed from this SOP and now subsumed in the Domestic Abuse Toolkit as not all instances of stalking are domestic | 07/08/2014 |
| 2.01 | Update in Section 3 to reflect changes in Section 8 of the Victims and Witnesses (Scotland) Act 2014. | 11/08/2014 |
| 3.00 | Statement added to frontispiece to notify users to ongoing review in support of the Criminal Justice (Scotland) Act 2016. | 25/01/2018 |
| 4.00 | Content fully revised and rationalised in line with new SOP review principles. | 23/04/2021 |