

**'Controlling or coercive behaviour in an intimate or family relationship' – Section 76 of
the Serious Crime Act 2015.**

SUMMARY

1. On 29th December 2015, Regulation 2 of the Serious Crime Act 2015 (Commencement No. 4) Regulations 2015 brings into force the following provisions of the Act:
 - a) Section 76, which creates a new either-way offence of coercive or controlling behaviour in an intimate or family relationship; and
 - b) Section 77, which allows the Secretary of State to issue guidance about the investigation of offences under section 76 to whoever the Secretary of State considers appropriate.
2. Case law suggests that the current law on stalking and harassment, as set out in the Protection from Harassment Act 1997, does not apply to controlling or coercive behaviour that takes place in an ongoing intimate relationship.¹ The offence of controlling or coercive behaviour closes this gap in the law as it can take place in an ongoing relationship. In cases of domestic violence and abuse where there is not enough evidence to charge for a physical injury, there may be enough evidence to charge for the new offence of controlling or coercive behaviour.
3. The offence would not apply where the behaviour in question is perpetrated against a child under 16 by someone aged 16 or over who has responsibility for that child (section 76(3)). This is because the criminal law, in particular the child cruelty/neglect offence in section 1 of the Children and Young Persons Act 1933 as amended by section 66 of the 2015 Act, already covers such behaviour.
4. By virtue of Section 76 (11) and the transitional provision in Section 86(14) (e), the maximum penalty on summary conviction of the offence will be **six months' imprisonment**. On the commencement of Section 154(1) of the Criminal Justice Act 2003, the maximum sentence on summary conviction will rise to **twelve months**. The maximum penalty on conviction on indictment is **five years' imprisonment**.
5. Ancillary orders can also be made upon sentence (for example, compensation orders) or conviction (for example, criminal behaviour orders or restraining orders).

ELEMENTS OF THE OFFENCE

6. A person (A) commits an offence under Section 76(1) if –
 - a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive;
 - b) at the time of the behaviour, A and B are personally connected;
 - c) the behaviour has a serious effect on B; and
 - d) A knows or ought to know that the behaviour will have a serious effect on B.

¹ See *R v Widdows* [2011] EWCA Crim 1500.

'Controlling or coercive'

7. Statutory guidance produced by the Home Office refers at paragraph 12 to the cross-government definition of domestic violence and abuse, which defines controlling and coercive behaviour as follows:
 - a) Controlling behaviour: A range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
 - b) Coercive behaviour: A continuing act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten their victim.
8. The guidance also sets out a non-exhaustive list of the types of behaviour which may be associated with coercion or control. This includes isolating a person from their friends and family, taking control over aspects of their everyday life and monitoring a person via online communication tools.

'Repeatedly or continuously'

9. Paragraph 14 of the Home Office Guidance defines "continuously" as "on an ongoing basis which could mean, but is not limited to, actions which cause the victim to change their way of living." Courts may look for evidence of a pattern of behaviour established over a period of time rather than, for example, one or two isolated incidents. Each case must be considered on an individual basis and there is no set number of incidents in which controlling or coercive behaviour has been displayed which must be proved.
10. The Act does not specify a timeframe between the incidents of the behaviour when it takes place repeatedly; therefore, the occurrences do not necessarily have to take place in immediate succession. Two such incidents taking place, for example, ten years apart are however unlikely to be sufficient, because they may not be considered to be behaviour occurring "repeatedly or continuously."

'Personally connected'

11. A and B are personally connected if they are in an intimate personal relationship, or they live together and are members of the same family or have previously been in an intimate personal relationship with each other (section 76(2)).
12. For the purposes of subsection (2) (b) (i), A and B are members of the same family if they are, or have been, married or civil partners, are relatives, have agreed to marry or enter into a civil partnership with one another whether or not the agreement has been terminated, are both parents of the same child or have, or have had, parental responsibility for the same child (section 76(6)).
13. It is not necessary for A and B to still be cohabiting or in a relationship when the offence is reported as long as the incidents took place when they were "personally connected" and after the offence came into force. If they were not personally connected, or the incidents took place after a relationship/cohabitation, the stalking and harassment legislation may apply.

'Serious effect'

14. A's behaviour has a serious effect on B if it causes B to fear, on at least two occasions, that violence will be used against B, or it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities (section 76(4)).
15. The Act does not state that B must fear violence that may be committed by the perpetrator only. For example, B may fear that the perpetrator has asked another person to commit violence against them.

'Knows or ought to know'

16. For the purposes of subsection (1) (d), A 'ought to know' that which a reasonable person in possession of the same information would know (section 76(5)).

AVAILABLE DEFENCE

17. In proceedings for an offence under Section 76, subsections (8) to (10) provide for a defence where the defendant can show that:
 - a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests, and
 - b) the behaviour was in all the circumstances reasonable.
18. The defence is intended to cover, for example, circumstances where a person was a carer for a mentally ill spouse who, by virtue of his or her medical condition, had to be kept at home or compelled to take medication for his or her own protection.
19. The defence is not available where a victim has been caused to fear that violence could be used against them, as opposed to being seriously alarmed or distressed (section 76(10)).
20. The test of 'reasonableness' is an objective one; therefore, if a defendant genuinely believed that they were acting in the other person's best interests but a reasonable person with access to the same information would not find that behaviour to have been reasonable, the defendant would not be able to rely on the defence.
21. The evidential burden will apply to the defence; that is, it will be enough for a defendant to produce sufficient evidence for the matter to be considered by a jury. It will then be for the prosecution to demonstrate to the criminal standard of proof that the defence has not been made out (section 76(9)).

USEFUL LINKS

22. Section 76 of the Serious Crime Act 2015 can be found in full here:
<http://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted>
23. The Statutory Guidance Framework presented by the Home Office on 5th December 2015 can be located at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf.
24. See the Sentencing Council Overarching Principles on Domestic Abuse at:
<http://www.sentencingcouncil.org.uk/publications/item/overarching-principles-domestic-violence-definitive-guideline/>