

THOMAS · MORE · CHAMBERS

**HARASSMENT CLAIMS  
IN EMPLOYMENT  
LAW**

**Wednesday 31<sup>st</sup> October  
6.30pm to 7.30pm**

**EMPLOYMENT LAW  
GROUP**



7 Lincoln's Inn Fields London WC2A 3BP

T 020 7404 7000 F 020 7381 4606

DX 90 Chancery Lane E clerks@thomasmore.co.uk

[www.thomasmore.co.uk](http://www.thomasmore.co.uk)

## HARASSMENT IN DISCRIMINATION LAW

### Definition

Section 3A Race Relations Act 1976:

(1) A person subjects another to harassment in any circumstances... where, on the grounds of race or ethnic or national origins, he engages in unwanted conduct that has the purpose or effect –

(a) of violating that other person's dignity, or

(b) of creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect mentioned in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.

Materially similar provisions are set out in the Disability Discrimination Act (section 3B); the Religion and Belief Regulations (reg. 5); the Sexual Orientation Regulations (reg. 5); and the Age Discrimination Regulations (reg. 6).

Section 4A of the Sex Discrimination Act provides:

(1) For the purposes of this Act, a person subjects a woman to harassment if

- (a) on the ground of her sex he engages in unwanted conduct that has the purpose or effect –
- (i) of violating her dignity, or
  - (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or
- (b) he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect
- (i) of violating her dignity, or
  - (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or
- (c) on the ground of her rejection of or submission to unwanted conduct of a kind mentioned in paragraph (a) or (b), he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.

(2) Conduct shall be regarded as having the effect mentioned in sub-paragraph (i) or (ii) of subsection (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered as having that effect.

### **Why is there a need for a statutory “stand alone” prohibition of harassment discrimination?**

Prior to the legislative changes the law (predominantly) of sexual and racial harassment was created and developed by judges. Whilst effective in many instances, the need for an appropriate comparator remained a necessary component for this type of unlawful

conduct, even in cases where a sex-specific form of conduct had taken place: MacDonald v Advocate General for Scotland; Pearce v Governing Body of Mayfield Secondary School [2003] IRLR 512, HL. This meant that treatment which is “offensive and humiliating” to a woman, for example is not caught by the direct discrimination prohibition for that reason alone. The treatment at issue had to be because of her sex and if that causative requirement was not established neither was direct discrimination.

Examples of this problem:

Stewart v Guest (Engineering) Ltd [1994] IRLR 444, EAT.

Brumfitt v Ministry of Defence [2005] IRLR 4.

### **Criticism of the new legislative provisions**

The new legislative provisions are intended to overcome the problems that occurred in the aforementioned cases. The use of the provision “on the grounds of”, however, has been the subject of considerable criticism as it leaves open the possibility that the need for a comparator has been reintroduced and, further, does not reflect the EU Equal Treatment Amendment Directive (2002/73/EC) article 2(2) that referred to unwanted conduct “related to the sex of a person” which has the prohibited purpose or effect.

The EOC challenged the Government’s method of implementing the said Directive by way of judicial review in EOC v Secretary of State for Trade and Industry [2007] EWHC 483 (Admin) and was successful.

## Sexual harassment

The second type of harassment prohibited by section 4A SDA creates a new wrong of sexual harassment where there is no need to show different treatment as between men and women or any connection with the victim's sex or gender. In most cases it will be the form of the harassment and the effect on the victim that is the key issue, not the reason for the conduct.

By removing the requirement for a comparator in cases involving conduct "of a sexual nature" it will no longer be possible to defend conduct such as displaying pornography in the workplace or the use of sexually explicit language or abuse on the grounds that men were subjected to the same treatment.

Problems may arise, however, in cases where there is an issue as to whether the conduct is of a sexual nature. Would, for example, the case of British Telecommunications plc v Williams [1997] IRLR 668, EAT be decided in the same way under the new legislative provisions?

The issue as to whether other types of behaviour amount to conduct "of a sexual nature" eg. when does horseplay become harassment, a man complimenting (or disparaging) a woman on new dress, hairstyle, etc or giving presents may prove contentious but could be eclipsed by other considerations such as whether such behaviour is "unwanted" or whether the "conduct shall be regarded as having the effect".

## **Unwanted conduct**

In all cases the conduct at issue must be “unwanted”. It remains open to employers, therefore, to defend the conduct at issue on the grounds that the conduct was not unwanted.

## **The effect of the conduct**

“Conduct shall be regarded as having the effect mentioned... only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.”

Some commentators have criticised the approach adopted in the new legislative provisions as regressive, suggesting a more objective requirement than the approach adopted in the earlier case law under the direct discrimination and detriment approach adopted where harassment was involved. It is questionable as to whether such criticism is accurate.

In Reed & Bull Information Systems Ltd v Stedman [1999] IRLR 299, Lord Johnston held:

“The essential characteristic of sexual harassment is that it is words or conduct which are unwelcome to the recipients and it is for the recipients to decide for themselves what is acceptable to them and what they regard as offensive. A characteristic of sexual harassment is that it undermines the victim’s dignity at work. It creates an “offensive”

or “hostile” environment for the victim and an arbitrary barrier to sexual equality in the workplace. Because it is for each individual to determine what they find unwelcome or offensive, there may be cases where there is a gap between what a tribunal would regard as acceptable and what the individual in question was prepared to tolerate. It does not follow that because the tribunal would not have regarded the acts complained of as unacceptable, the complaint must be dismissed.”

In Driskel v Peninsula Business Services Ltd [2000] IRLR 151 Holland J held, following on from Reed & Bull that, whilst the applicant’s subjective perception of the matters complained of were a material factor to be taken into consideration when determining whether detriment had been suffered, “hypersensitivity” on the part of the claimant in response to conduct not reasonably perceived by the alleged discriminator as being to the claimant’s detriment would defeat a discrimination claim.

It is submitted that the new legislative approach closely mirrors the pre-legislative approach and that it is unlikely that the courts will find that the threshold as to what amounts to conduct having the requisite effect has been raised.

It should be noted that a woman who brings a claim of sexual harassment is potentially vulnerable to cross examination on her attitude to sexual matters. In Snowball v Gardner Merchant Ltd [1987] IRLR 397, the EAT held that a tribunal was entitled to rule that evidence concerning the complainant’s general attitude to sexual behaviour was admissible as it was relevant for the purpose of deciding whether she had, in fact, suffered any injury to feelings as a consequence of the alleged acts of sexual harassment directed against her by her manager. In Wileman v Minilec Engineering Ltd [1988] IRLR

144, the EAT held that the wearing of provocative clothes by the female complainant could be taken into account by the tribunal as an element in deciding whether acts of sexual harassment really did constitute a detriment.

### **Burden of proof**

The burden of proof in respect of harassment claims is the same as for direct and indirect discrimination. Under the first stage the claimant must prove primary facts upon which the tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an act of unlawful harassment. If the first stage is satisfied, the tribunal must uphold the complaint unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act.

### **Harassment not covered by discrimination legislation**

Is there a de minimis rule?

Waters v Metropolitan Police Commissioner [2000] IRLR 720, HL per Lord Hutton:

“it is not every course of victimisation or bullying by fellow employees which will give rise to a cause of action against the employer, and the employee may have to accept some degree of unpleasantness from fellow workers. Moreover, the employer will not be liable unless he knows or ought to know that the harassment is taking place and fails to take reasonable steps to prevent it.”

Harassment of a non-discriminatory nature.

Just because a person is bullied or otherwise harassed at work does not mean that they are afforded protection by any of the legislative provisions outlined above. Principal reason why some commentators have called for a statutory tort of harassment that carries no requirement of being on the grounds of (or even related to) prohibited discrimination. Such non-discriminatory protection, however, now exists to a certain degree under the Protection from Harassment Act 1997 in light of the decision in Majrowski v Guy's and St Thomas's NHS Trust [2006] IRLR 695.

### **Employer's liability for the acts of others**

#### Section 41 Sex Discrimination Act 1975

- (1) Anything done by a person in the course of his employment shall be treated for the purposes of this Act as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.
- (2) Anything done by a person or agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Act as done by that other person as well as by him.
- (3) In proceedings brought under this Act against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to

prevent the employee from doing that act, or from doing in the course of his employment acts of that description.”

Materially similar provisions under the Race Relations Act (section 32); the Disability Discrimination Act (section 58); the Religion and Belief Regulations (reg. 22); the Sexual Orientation Regulations (reg. 22); and the Age Discrimination Regulations (reg. 25).

Initially it was assumed that the common law vicarious liability principles should apply to acts done “in the course of his employment” – where much depends on whether the action of the employee was merely an unauthorised or prohibited mode of doing an unauthorised act: Irving and Irving v Post Office [1987] IRLR 289, CA. The application of these principles, however, can have the effect that the more extreme or outrageous the discriminatory acts of the fellow employee the less likely the employer was to be liable for them under the doctrine of vicarious liability. This lacuna was recognised by the Court of Appeal in Jones v Tower Boot Co Ltd [1997] IRLR 168 where it was held that the doctrine of vicarious liability is not to be applied under the aforementioned sections. The wording of the sections are to be constructed purposively and to be given “a broad interpretation”. “It would be inconsistent with that requirement to allow the notion of the ‘course of employment’ to be construed in any sense more limited than the natural meaning of those everyday words would allow.”

Liability may apply not just to acts of harassment carried out during working time but even to acts carried outside of working and off premises: Chief Constable of the Lincolnshire Police v Stubbs [1999] IRLR 81, EAT.

The subsection (3) defence can be relied upon if the employer can prove “that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description”.

In Balgobin and Francis v London Borough of Tower Hamlets [1987] IRLR 401, the defence was held to be established in a case where the employers had no knowledge of the unlawful discrimination carried out by fellow employees by proof of proper and adequate staff supervision and publication by the employers of the equal opportunities policy.

The EAT has held that the subsection (3) defence should be construed narrowly. In Caniffe v East Riding of Yorkshire Council [2000] IRLR 555 the EAT held that if further steps could have been reasonably taken by the employer it is not necessarily a defence to show that those steps would not have prevented anything from occurring. In Croft v Royal Mail Group plc [2003] IRLR 592, however, the Court of Appeal held that in considering what steps are reasonable, it is permissible to take into account the extent of the difference, if any, which the action is likely to make. The concept of reasonable practicability entitles the employer in this context to consider whether the time, effort and expense of the suggested measures are disproportionate to the result likely to be achieved.

### **Employer liability for acts of harassment by third parties**

Burton and Rhule v De Vere Hotels [1996] IRLR 596, EAT initially indicated that such liability exists.

MacDonald v Advocate General for Scotland; Pearce v Governing Body of Mayfield Secondary School [2003] IRLR 512, the House of Lords observed (obiter) that Burton had been wrongly decided. Their Lordships took the view that it was wrong to treat an employer's failure to take reasonable steps to protect employees from racial or sexual abuse by third parties as discrimination even though the failure had nothing to do with the sex or race of the employees.

In the aforementioned case EOC v Secretary of State for Trade and Industry [2007] EWHC 483 (Admin) Burton J also concluded that the definition of harassment was too narrow and did not reflect the broad protection set out in the 1976 Equal Treatment Directive as revised by the 2002 Directive as it failed to provide protection to women harassed by third parties, even in circumstances where the employer knows about the harassment and could take steps to prevent it. Burton J held that under the 2002 Directive a woman is protected against harassment in such circumstances.

The issue of protection from third party harassment is a key element in the Government's Green Paper/The Discrimination Law Review A Framework For Fairness and it is anticipated that the eventual amendments to the legislation will provide a form of specific protection against and employer liability for such third party harassment.

Employer liability for third party harassment of their employees, however, may already exist in light of the decision in Gravell v London Borough of Bexley UKEAT/0587/06/CEA, [2007] All ER (D) 220.

Claimant was employed by the Respondent in its housing department and complained of customers' use of racist language and that the Respondent had a policy of not preventing such conduct. The claim was struck out by the tribunal at a pre-hearing review in light of the observations by the House of Lords in Pearce. Peter Clark J overturned this decision in the EAT. He noted that there was no comparative exercise needed under section 3A RRA 1976 (as opposed to section 1(1)(a)) and stated:

“Thus it seems to me at the strike-out stage that there is considerable scope for argument as to whether the observations of the House of Lords on Burton in Pearce, based on section 1(1)(a) RRA 1976, also hold good in a claim of section 3A harassment. No decided case on point has been shown to me... The case which the Claimant wishes to advance is that the Respondent's policy of not challenging racist behaviour by its clients is capable of itself of having the effect of creating an offensive environment for her. That, if established on the facts, is capable in my judgment of falling within section 3A RRA 1976.”

## **Damages**

Injury to feelings. Current guidance is provided in Vento v Chief Constable of West Yorkshire Police (No 2) [2003] IRLR 102, CA. Injuries to feelings of most serious kind - £15,000 to £25,000. Mid range - £5,000 to £15,000. Low range £500 to £5,000.

If a causal link is established between the unlawful act of discrimination and psychiatric injury on the part of the victim, damages for that personal injury can be recovered. The

test of reasonable foreseeability is not applicable to limit the wrongdoer's liability: Essa v Laing Ltd [2004] IRLR 313.

Aggravated damages may be awarded in certain circumstances. They may be awarded because of the lenient or favourable way in which an employer has treated the perpetrator of discrimination (promoting him, for example, before the outcome of an inquiry into his conduct): British Telecommunications plc v Reid [2004] IRLR 327, CA. Treating a complaint of harassment in a trivial way can give rise to such an award: HM Prison Service v Salmon [2001] IRLR 425, EAT. They may also be awarded if a respondent defends proceedings in a way that is wholly inappropriate and intimidatory: Zaiwalla & Co v Walia [2002] IRLR 697, EAT.

Exemplary damages may be awarded but only if compensation is insufficient to punish the wrongdoer and if the conduct is either (a) oppressive, arbitrary or unconstitutional action by the agents of government or (b) where the defendant's conduct has been calculated by him to make a profit which may well exceed the compensation payable to the applicant.

### **Harassment in unfair dismissal claims**

Relevant where an employee claims constructive unfair dismissal. An employer who fails to address a situation where an employee is subjected to an act or course of harassment, whether a form of prohibited discrimination or not, is susceptible to a subsequent claim for constructive unfair dismissal on the grounds of a breach of the implied term of trust and confidence. Making persistent and unwanted amorous

advances towards female employees was an example of conduct that may breach the implied term given in the guideline case of Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27, CA. A failure to properly investigate allegations of sexual harassment, or to treat such incidents with sufficient gravity will normally constitute a breach: Bracebridge Engineering Ltd v Darby [1990] IRLR 3.

Under statutory grievance procedures the employee will have had to have raised a step one grievance in relation to the conduct at issue to be able to rely upon it in any subsequent constructive unfair dismissal claim. The EAT has held that there is an implied term in the contract of employment that employers will reasonably and promptly afford employees a reasonable opportunity to obtain redress in respect of any grievance that they may have: W A Goold (Peamak) Ltd v McConnell [1997] IRLR 516.

**MANUS EGAN**

OCTOBER 2007

## **THE USE OF THE PROTECTION FROM HARASSMENT ACT IN EMPLOYMENT LAW**

1. Since the Protection from Harassment Act 1997, an employee has been entitled to bring a claim for harassment in the County Courts for matters not relating to discrimination.
2. The relevant sections of Act 1997 are annexed hereto. In summary section 1 defines “harassment”, section 2 deals with criminal liability, and section 3 with civil liability.

### *Civil Offence*

3. The scope of section 3 is wide. It applies where there is an actual or apprehended breach of section 1 of the Act.
4. To prove harassment an employee must show that:
  - (a) a person has pursued a course of conduct (section 7);
  - (b) that person knew or ought to have known that his conduct amounted to harassment of another;
  - (c) he ought so to have known if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other;
  - (d) conduct may include things said;
  - (e) a “course” of conduct involves conduct on at least two occasions. The fewer in number and the more distant those occasions are in time from each other the more difficult it will be to find a course of conduct.
5. “Harassment” is not defined in the Act, but under case law has been held to be conduct calculated to produce certain consequences, targeted at an individual, calculated to produce alarm and distress, and oppressive and unreasonable – see ***Thomas v Mirror Group Newspapers Ltd*** [2001] EWCA Civ 1233 at para 30, [2002] EMLR 78 and ***Majrowski v Guys and St Thomas' NHS Trust*** [2005] IRLR 340.

*“Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2.”*

6. Since **Majrowski** it is absolutely clear that an employer can be vicariously liable for harassment under the Act for acts of his employees.
7. The facts: the Claimant's claim was that whilst he was employed by the Trust, he was subject to bullying and intimidation by his Manager, Mrs Freeman. A formal complaint of harassment was made to the Trust, which was upheld. The Claimant complained of rude and abusive behaviour, in front of other members of staff, as well as the imposition of unrealistic performance targets, and the threat of disciplinary proceedings. A year later, the Claimant was dismissed, for unrelated reasons; Mrs Freeman resigned from the Trust. Some four years later, the claim was brought under the 1997 Act. Mr Majrowski said that his treatment was due to the homophobia of Mrs Freeman, as he was a gay man.
8. The following principles can be distilled from the House of Lords' Opinions:
  - (a) The 1997 Act was intended to include prohibition of harassment by employees in the course of their employment;
  - (b) The 1997 Act is no exception to the principle of vicarious liability i.e. that where an employee commits a breach of statutory obligation sounding in damages while acting in the course of his employment, an employer will be liable;
  - (c) The acts of the employee must meet the 'close connection' test for the employer to be liable;
  - (d) The 'employer's defence' available in discrimination proceedings is not available in claims under the 1997 Act.
  - (e) If such a decision was to be made on policy, they would have ruled in favour of the Trust (see in particular Baroness Hale's speech).
9. The Act has also been considered by the High Court in **Green v DB Group Services (UK) Ltd** [2006] IRLR 764, a decision subsequent to **Majrowski**. Substantial damages were awarded (£850,000), and the Court upheld a claim under the 1997 Act. However, Owen J focussed on the claim of negligence as he was satisfied that the Defendant was in breach of its duty of care to the Claimant in failing to take any or any adequate steps to protect her from such behaviour.

### *Damages*

10. The Act provides that damages may be awarded for (among other things) anxiety caused by the harassment, as well as financial loss. It is suggested that other things might include injury to feelings, and losses for personal injury, such as depression caused as a result of the harassment.
11. As yet, there are no reported cases on the principles for assessing damages for anxiety in such claims, although guidance is likely to be taken from those cases dealing with injury to feelings in the Employment Tribunal.

### *Procedural Points*

12. Time Limits: the relevant time limit for commencing a claim under the 1997 Act is six years: s.6.
13. Compromise agreements – it is suggested that employers add to the list of such matters that are compromised any claim under the Protection from Harassment Act 1997.
14. Plainly, causation in relation to personal injury will be an important factor, and expert evidence may be required to demonstrate the nature of any personal injury, whether or not the Claimant had any pre-existing mental illnesses, and an investigation of the Claimant's medical notes may be required.

### *Criminal Offences*

15. Such prosecutions will take place where the Police become involved, and a decision whether to prosecute would ultimately be made by the Crown Prosecution Service. Such an offence is only relevant in relation to a fellow employee, and a Respondent Company could not be charged for the criminal offence of harassment.
16. Where matters are reported to the Police, an employee may also raise a grievance at the same time with the employer. An employer will have an obligation to deal with that grievance at the same time as concurrent criminal proceedings..

## Which Court?

17. The Tribunal has no jurisdiction to deal with claims in tort other than the statutory torts which specifically fall within its jurisdiction. Claims under the Protection from Harassment Act 1997 should therefore be brought in the County Court.
18. Deciding which Court in which to bring a claim, may be difficult in certain scenarios. For example where an employee has been subjected to a course of harassment by his fellow employees, by which he suffers personal injury, he may have a discrimination claim (such claims should be brought in the Employment Tribunal), but if the acts are such that discrimination may not be made out, it may be better to bring such a claim in the County Court.
19. The following factors are relevant in deciding where to bring such a claim against the employer in the County Court:
  - Deeper pockets – by bringing a claim against the employer rather than a fellow employee
  - More grounds on which to establish harassment (not just discrimination)
  - The statutory defence is not available
  - A six year time limit, rather than three or six months
  - The statutory grievance procedures do not apply
  - Costs are normally recoverable
  - Legal aid may be available

**CLAIRE PALMER**

30<sup>th</sup> October 2007

## **Protection from Harassment Act 1997**

### **1 Prohibition of harassment**

- (1) A person must not pursue a course of conduct—
  - (a) which amounts to harassment of another, and
  - (b) which he knows or ought to know amounts to harassment of the other.
- (2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.
- (3) Subsection (1) does not apply to a course of conduct if the person who pursued it shows—
  - (a) that it was pursued for the purpose of preventing or detecting crime,
  - (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
  - (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

### **2 Offence of harassment**

- (1) A person who pursues a course of conduct in breach of section 1 is guilty of an offence.
- (2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.
- (3) In section 24(2) of the [1984 c. 60.] Police and Criminal Evidence Act 1984 (arrestable offences), after paragraph (m) there is inserted—

“(n) an offence under section 2 of the Protection from Harassment Act 1997 (harassment).”.

### **3 Civil remedy**

- (1) An actual or apprehended breach of section 1 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.
- (2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.
- (3) Where—
  - (a) in such proceedings the High Court or a county court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment, and
  - (b) the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction,
  - (c) the plaintiff may apply for the issue of a warrant for the arrest of the defendant.
- (4) An application under subsection (3) may be made—
  - (a) where the injunction was granted by the High Court, to a judge of that court, and
  - (b) where the injunction was granted by a county court, to a judge or district judge of that or any other county court.
- (5) The judge or district judge to whom an application under subsection (3) is made may only issue a warrant if—
  - (a) the application is substantiated on oath, and
  - (b) the judge or district judge has reasonable grounds for believing that the defendant has done anything which he is prohibited from doing by the injunction.
- (6) Where—
  - (a) the High Court or a county court grants an injunction for the purpose mentioned in subsection (3)(a), and
  - (b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction,
  - (c) he is guilty of an offence.

- (7) Where a person is convicted of an offence under subsection (6) in respect of any conduct, that conduct is not punishable as a contempt of court.
- (8) A person cannot be convicted of an offence under subsection (6) in respect of any conduct which has been punished as a contempt of court.
- (9) A person guilty of an offence under subsection (6) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

#### **6 Limitation**

In section 11 of the [1980 c. 58.] Limitation Act 1980 (special time limit for actions in respect of personal injuries), after subsection (1) there is inserted—

“(1A) This section does not apply to any action brought for damages under section 3 of the Protection from Harassment Act 1997.”

#### **7 Interpretation of this group of sections**

- (1) This section applies for the interpretation of sections 1 to 5.
- (2) References to harassing a person include alarming the person or causing the person distress.
- (3) A “course of conduct” must involve conduct on at least two occasions.
- (4) “Conduct” includes speech.

### **SCOTLAND**

#### **10 Limitation**

- (1) After section 18A of the [1973 c. 52.] Prescription and Limitation (Scotland) Act 1973 there is inserted the following section—

##### **“18B Actions of harassment**

- (1) This section applies to actions of harassment (within the meaning of section 8 of the Protection from Harassment Act 1997) which include a claim for damages.
  - (2) Subject to subsection (3) below and to section 19A of this Act, no action to which this section applies shall be brought unless it is commenced within a period of 3 years after—
    - (a) the date on which the alleged harassment ceased; or
    - (b) the date, (if later than the date mentioned in paragraph (a) above) on which the pursuer in the action became, or on which, in the opinion of the court, it would have been reasonably practicable for him in all the circumstances to have become, aware, that the defender was a person responsible for the alleged harassment or the employer or principal of such a person.
  - (3) In the computation of the period specified in subsection (2) above there shall be disregarded any time during which the person who is alleged to have suffered the harassment was under legal disability by reason of nonage or unsoundness of mind.”
- (2) In subsection (1) of section 19A of that Act (power of court to override time-limits), for “section 17 or section 18 and section 18A” there is substituted “section 17, 18, 18A or 18B”.