
Directives issued in terms of section 20(1)(a) of the
Protection from Harassment Act, 17 of 2011

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PROTECTION FROM HARASSMENT

I, MSO Nxasana, National Director of Public Prosecutions, hereby in terms of Section 20(1)(a) of the *Protection from Harassment Act, 17 of 2011*, withdraw all directives previously issued in terms of said section and issue the following directives to be observed in the institution of prosecutions in respect of any offence arising out of this Act.

A. General

1. The *Protection from Harassment Act, 17 of 2011* (the Act), which came into operation on 27 April 2013, provides for the issuing of protection orders against harassment. The Act extends the protection afforded under the *Domestic Violence Act, 116 of 1998*, to persons not necessarily in a domestic relationship and provides additional recourse to persons who may in the past have applied in terms of section 348 of the *Criminal Procedure Act, 56 of 1955*, for a binding over of a person to keep the peace.
2. These Directives are issued in terms of section 20(1)(a) of the Act which requires the National Director, in consultation with the Minister and after consultation with the Directors of Public Prosecutions, to issue directives regarding the institution of prosecutions in respect of any offence arising out of the Act. These directives only take effect after submission to Parliament.
3. Although prosecutors do not participate in applications for protection orders, prosecutors may advise complainants or other members of the public of the relief available in terms of this Act and the right to lay criminal charges with the South African Police. Persons who wish to apply for protection orders must be referred to the clerk of the court who submits the application and affidavits to the court.
4. Where relevant, prosecutors should also have regard to the Directives regarding Sexual Offences and Domestic Violence.

B. Offences and penalties in terms of the Act

1. Section 18 of the Act creates a number of offences that may be committed by various persons.
2. Offences that may be committed by a respondent are the following:
 - (a) A respondent is any person against whom proceedings are instituted in terms of the Act.
 - (b) Section 18(1)(a) of the Act makes it an offence for a respondent to contravene any prohibition, condition, obligation or order imposed by a court in terms of a protection order or interim protection order.
 - (c) The sentence upon conviction is a fine or imprisonment for a period not exceeding five years.
 - (d) Furthermore, the court convicting a respondent of an offence must enquire and determine whether that person is unfit to possess a firearm in accordance with section 103(2) of the *Firearms Control Act, 60 of 2000*.
3. Offences that may be committed by a complainant are the following:

- (a) A complainant is any person who alleges that he or she is being subjected to harassment, and in the context of this offence, is a person in favour of whom a protection order or an interim protection order has been issued.
 - (b) Section 18(1)(b) of the Act makes it an offence for a complainant to make a false statement in a material respect in an affidavit, which is handed to a member of the South African Police Service, together with the warrant of arrest, wherein it is stated that the respondent has contravened any specified prohibition, condition, obligation or order contained in a protection order.
 - (c) The sentence upon conviction is a fine or imprisonment for a period not exceeding five years.
4. Offences that may be committed by electronic communications service providers and their employees are the following:
- (a) An electronic communications service provider is an entity or person providing an electronic communications service, whether licensed or exempted from being licenced, such as telephone, cell-phone, or e-mail communications.
 - (b) Section 18(4)(a)(i) of the Act makes it an offence for such service provider, or an employee thereof, to fail to furnish the information required by the court to assist in establishing the identity or address of a respondent within five ordinary court days from the time of service of a direction or an extended period of five days allowed by the court.
 - (c) Section 18(4)(a)(ii) of the Act makes it an offence for such service provider or employee thereof, to make a false statement in a material respect, in an affidavit in response to a direction or request for additional evidence.
 - (d) Section 18(4)(iii) of the Act makes it an offence for a service provider not to inform the respondent at least 48 hours before providing the information to the court by means of an electronic communication, that such information is to be provided to the court, with the direction reference number and details of the court.
 - (e) The penalty in the case of a service provider is a maximum fine of R10 000, and in the case of an employee a fine or imprisonment not exceeding six months.
5. Offences that may be committed by others:
- (a) Section 18(1)(b) of the Act makes it an offence for any person to make a false statement in a material respect in an affidavit, wherein it is stated that the respondent has contravened any specified prohibition, condition, obligation or order contained in a protection order, which is handed to a member of the South African Police Service by the complainant together with the warrant of arrest.
 - (b) The sentence upon conviction is a fine or imprisonment for a period not exceeding five years.
 - (c) Section 18(2) of the Act makes it an offence for any person to reveal the identity or address of a person where the court has directed that the identity or address of such person may not be revealed.
 - (d) Section 18(2) of the Act also makes it an offence for any person to publish any information where the court has directed that no information relating to the proceedings may be published.
 - (e) The penalty on conviction of any of the above offences is a fine or imprisonment for a period not exceeding two years.
 - (f) Section 18(5) of the Act makes it an offence for any person requested to furnish his or her name and address or any other information to a member of the South

African Police Service to fail to do so, or furnish a false or incorrect name and address or other information.

(g) The penalty on conviction is a fine or imprisonment not exceeding six months.

6. The maximum fines that may be imposed must be calculated in terms of the *Adjustment of Fines Act, 101 of 1991*, as read with section 92(1)(b) of the *Magistrates' Courts Act, 32 of 1944*¹, excluding a service provider where the maximum fine remains R10,000.00 as prescribed in section 18(4)(b)(i) of the Act.
7. Admission of guilt fines may not be set for contraventions of section 18(1) of the Act.

C. Prosecution of respondents

1. The offences committed by respondents are essentially contraventions of a court order. There may be varying degrees of non-compliance, which prosecutors should take into account in determining whether to prosecute the respondent in the district or regional court. Where respondents have committed other offences in addition to contravening this Act, these charges should also be included in the same case.
2. The existence of the court order is proved in accordance with the requirements of section 235 of the *Criminal Procedure Act, 1977*. It is also necessary to prove that the respondent has knowledge of the protection order. This is usually proved through evidence of the return of service.
3. In the case of interim protection orders, these are of force and effect from the time of issue by the court and the existence thereof was brought to the attention of the respondent. Thus, evidence may be presented that the order was brought to attention of the respondent prior to service should this be necessary.
4. Protection orders are in force for a period of five years or a specific period determined by the court, which should be apparent from the order.
5. Prosecutors should treat complainants with fairness, compassion and respect. Prosecutors should ensure that complainants feel affirmed and supported by the system.
6. Prosecutors should avoid secondary victimisation resulting from inordinate and avoidable delays during the criminal trial. Prior to consultation and where possible, prosecutors should ensure the complainant receives court preparation by a court preparation officer (where available).
7. Prosecutors should also consider whether the following provisions of the *Criminal Procedure Act, 1977*, may be appropriate:
 - (a) Section 153, which provides for proceedings to be held *in camera*.
 - (b) Section 154, which provides for the prohibition of publication of certain information.

¹ As at 31 January 2012 a fine of R20, 000 is equated to imprisonment of 6 months. Thus, for a maximum penalty of three months the fine would be a maximum of R10, 000. For imprisonment not exceeding two years the fine would be a maximum of R80, 000. For a maximum of 5 years imprisonment the maximum fine would be R200, 000.

- (c) Section 158(2), which provides that a witness may give evidence by means of closed circuit television or similar electronic media.
 - (d) Section 170A, which permits witnesses under the biological or mental age of 18 years to testify through intermediaries.
8. Where a respondent has been arrested by the South African Police Service and is in custody, prosecutors should generally oppose bail. The following considerations, that the member of the South African Police Service are required to take into account in deciding to arrest the respondent, are also relevant to bail:
- (a) The risk to the safety or well-being of the complainant or related person.
 - (b) The seriousness of the conduct comprising an alleged breach of the protection order.
 - (c) The length of time since the alleged breach occurred.
 - (d) The nature and extent of the harm previously suffered by the complainant or related person.
9. Where a respondent was arrested by the South African Police Service, but released on bail prior to his or her first appearance by a police official, prosecutors should consider applying to court to add further conditions of bail in terms of section 62 of the *Criminal Procedure Act, 1977*.
10. Prosecutors must request the police to inform the complainants of the outcome of any bail application. If bail is granted, the court must be requested to impose special conditions relating to contact with the complainant. The complainant should also be informed of the procedure to be followed if the accused person contravenes any of the bail conditions.

D. Prosecution of complainants

In prosecution of complainants for making false statements in a material respect in an affidavit, prosecutors should have regard to the intended and actual consequences of the complainant's action in determining whether to prosecute the person in the district or regional court.

E. Prosecution of electronic communication service providers and/or their employees

- 1. In most instances the setting of an admission of guilt penalty will be appropriate.
- 2. Where there has been an intentional contravention, prosecutors should rather have the matter heard in court.

F. Prosecution of offences committed by others

- 1. The revealing or publication of information contrary to the direction of the court may have serious consequences for complainants in particular. Similarly, the making of a false statement in a material respect in an affidavit can have serious consequences for a respondent. Prosecutors should have regard to the intended and actual consequences of the particular action in determining whether to prosecute the person in the district or regional court.

2. The failure to furnish information or correct information to the South African Police Service is an offence that should be tried in the district court. Admission of guilt fines may be set for minor infringements.

G. Failure to comply with these directives

Prosecutors who fail to comply with the directives will be dealt with according to the disciplinary codes of the National Prosecuting Authority.